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THE FACILITATED INDIVIDUALIZED EDUCATION PROGRAM PROCESS: STATE PERSPECTIVES

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THE FACILITATED INDIVIDUALIZED EDUCATION PROGRAM PROCESS:
STATE PERSPECTIVES

A Dissertation
Presented to
The Graduate School of
Clemson University

In Partial Fulfillment
of the Requirements for the Degree
Doctor of Philosophy
Curriculum & Instruction

by
Jennifer Young Wagner
December 2014

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ABSTRACT

Conflict between parents and school personnel continues to be an area of concern for students with disabilities, despite efforts by lawmakers to provide more parental input into the process of identification and continuation of special education services. Recent data suggest that unresolved conflict at the local level can cost a school district thousands of dollars to resolve the conflict in court, without consideration to the emotional costs that can be involved with this type of conflict resolution. Through mandates from IDEA 2004, alternative dispute resolution (ADR) strategies, such as facilitated individualized education program (FIEP) meetings, have been utilized to reduce these costs. FIEP meetings offer an alternative to costly litigation by utilizing a neutral third party to ensure all stakeholders involved in the FIEP meeting are focused on the best interests of the child. ADR strategies, specifically FIEP meetings, have not been widely researched. More than half the states utilize these meetings, therefore it is important to research what, if any, impact these meetings have on resolving conflict between stakeholders. This study examined the different types of ADR utilized across the states, specifically FIEP meetings, and data were collected regarding their effectiveness. Results revealed that the overarching perception regarding their effectiveness are positive; however, there are some limitations to these meetings and not all states collect and/or report data regarding FIEP meetings. Additionally, there are many different parameters regarding the implementation and use of FIEP meetings, including the training offered, compensation and case load for facilitators, and years these meetings have been offered state-wide. Implications and suggestions for future research are provided.

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CHAPTER ONE

INTRODUCTION

The purpose of this chapter is to provide an overview of alternative dispute resolution (ADR) for students who receive special education services. Different types of conflict resolution available to parents and school personnel are provided, followed by a review of parental rights and processes for filing complaints as stipulated by the Individuals with Disabilities Act (IDEA). The chapter concludes with the statement of the problem and the significance of the study as well as research questions addressed.

Overview of Conflict Resolution in Special Education

Conflict between parents and school personnel is an area of increasing concern, especially for families of children with disabilities (Mueller, 2009a and 2009b; Reiman et al., 2007). During the 2009-2010 and 2010-2011 academic school years, approximately 2,000 court cases were heard and settled in the United States related to special education regarding placement decisions, free, appropriate public education (FAPE), and discipline issues (Data Accountability Center, 2012). These types of hearings can be costly for both school districts as well as parents. According to Zirkel and McGuire (2010), each hearing between parents of individuals with disabilities and schools requires at least \$50,000 to cover attorney and other legal fees. If a case is appealed, costs can escalate to \$100,000 (Teacher Paperwork Reduction Act, 2002). The most prevalent reasons for conflict between school personnel and parents of children with disabilities are tied to issues of FAPE (Mueller & Carranza, 2011; Zirkel, 2008). Many cases entail difficulties in acquiring appropriate services, overall quality of the student's Individualized

Education Program (IEP), or access to information regarding specialized services (Mueller, Singer, & Draper, 2008).

For purposes of this manuscript, conflict is defined as, “the interaction of interdependent people who perceive incompatible goals and interference from each other in achieving these goals” (Folger, Poole, & Stutman, 2000, p.5). To date, the most common areas of conflict between parents and school personnel include: identification/evaluation, education programming, special education placement, and discipline (Mueller & Carranza, 2011).

The IDEA (1997, 2004), which protects the rights of children with disabilities, along with their parents, established a formal hearing process for resolving disputes. There are formal hearing complaint procedures and ADR strategies available through IDEA, which are outlined below. Unfortunately, formal hearings often result in high financial costs, emotional strains, and disruption to a positive home – school partnership (Feinberg et al., 2002; Opunda, 1999). These hearings can sometimes be combative, leaving little opportunity for collaboration. These limitations support the need for more research on ADR strategies. Alternative strategies could lead to fewer due process hearings and formal complaints, improved relations between the parents and school personnel, and ultimately increased learning opportunities for the student (Mueller, 2004).

Parental Rights

Parental involvement has been one of the cornerstones of special education case law (Wagner & Katsiyannis, 2010; Yell, Ryan, Rozalski & Katsiyannis, 2009). Both

IDEA 1997 and 2004, with accompanying regulations, provided parents increased rights to help protect the educational interests of their children with disabilities. Today, parents are required to be integral members of eligibility (multidisciplinary) and placement teams in special education. Parents also have the right to informed consent for any type of eligibility or placement decision. In 2004 legislation stressed the need for even more meaningful parental involvement in the IDEA'S findings and purpose section.

Almost 30 years of research and experience has demonstrated that the education of children with disabilities can be made more effective by—strengthening the role and responsibility of parents and ensuring that families of such children have meaningful opportunities to participate in the education of their children at school and at home. (IDEA 20 U.S.C. § 1400 (c)(5)(B))

Under IDEA, parents enjoy substantive rights to ensure that their child with a disability receives a FAPE. However, when parents and school personnel are all directly involved with the child's special education program, differing opinions commonly arise, which may or may not result in conflict. Nonetheless, conflict is inevitable when both parents and school personnel disagree. If a disagreement occurs between parents and school personnel regarding a child's FAPE (i.e. identification, evaluation, placement, program), either party can elect one of several forms of dispute resolution that are categorized as either formal or alternative. Arguably, the most well-known formal dispute resolution process is the administrative adjudicative route commonly referred to as "Due Process" (Zirkel & McGuire, 2010). Due process is comprised of different options for parents to pursue an amicable resolution, which include: due process hearing, a resolution session, and/or mediation (see Table 1.1). A lesser known and utilized resolution process is the administrative investigative route, which is comprised of a

formal complaint procedure. Additionally, many states have begun to offer ADR strategies, including parent-to-parent assistance, case manager, ombudsperson, and facilitated IEP (FIEP). Both formal types of dispute resolution will be discussed first, followed by a discussion of the most common and utilized ADR processes.

Table 1.1

Two Routes of Formal Dispute Resolution

| Administrative Investigative Route | Administrative Adjudicative Route |
|---|---|
| <p>Formal Complaint Procedure Used to investigate claims against a school district for not complying with the law. *One-tier procedure: complaint made directly to SEA *Two-tier procedure: complaint made directly to LEA, appeals made to SEA <u>Timeframe:</u> Decision submitted 60 days after initial complaint <u>Legal Counsel:</u> Either party <u>Decision:</u> Decision(s) made do not have a binding effect on any subsequent hearing officer proceeding. Any state-level administrative appeal of the decision is a matter of state law and enforceable in court. A hearing officer does not have to exclude an issue that a parent has concurrently submitted to the formal complaint process <u>Statute of Limitations:</u> 1 year. States can increase this timeline</p> | <p>Used to challenge factual components of an IEP (i.e. a student's placement, discipline) 1. Resolution Sessions: For parents to discuss their due process complaint; LEA has opportunity to resolve the dispute <u>Timeframe:</u> 15 calendar days; must be resolved 30 calendar days after meeting. Can waive meeting if both agree to mediation <u>Legal Counsel:</u> If parent does not bring lawyer to meeting, neither can LEA <u>Decision:</u> Agreement is binding. If no agreement within 30 days, hold due process hearing. Evidence presented can be used in a due process hearing 2. Mediation: Voluntary process used to resolve disagreements collaboratively using a mediator <u>Timeframe:</u> 15 calendar days; must be resolved in 30 calendar days after meeting. Must be available before and after due process complaint filed <u>Legal Counsel:</u> Either party can be represented <u>Decision:</u> Agreement is binding. If no agreement and complaint filed, either hold a resolution session or due process hearing. Evidence presented can not be used in a due process hearing 3. Due Process Hearing: Due process hearings are administrative hearings that are conducted like a court trial *One-tier procedure: complaint made directly to SEA *Two-tier procedure: complaint made directly to LEA, appeals made to SEA <u>Timeframe:</u> Hearing officer renders decision in 45 days after initial request; 2-tier states, 30 days <u>Legal Counsel:</u> Either party can be represented <u>Decision:</u> Decision final unless one party decides to appeal <u>Statute of Limitations:</u> 2 years. States can adjust timeline in either direction</p> |

Formal Dispute Resolution

Formal Complaint Procedure Route

The formal complaint procedure (IDEA Regulations § § 300.151-300.153) requires each state education agency (SEA) to develop a procedure for parents to air grievances to either the SEA, or directly to the local education agency (LEA). If the dispute is handled by the LEA, the opinion must be reviewed by the SEA (§ 300.151(a)(1)(ii)). Hence, the majority of states have chosen the one tier approach, which requires parents to complain directly to the SEA (Zirkel & McGuire, 2010). In a two tier approach, the parents would complain to the LEA first, and if the parties could not resolve the conflict, the SEA would then be contacted regarding the complaint. The formal complaint procedure, or formal grievance, is used to investigate a claim made against a school district for not complying with the law, (Suchey & Huefner, 1998). According to Suchey and Huefner, such examples of formal grievances include: (a) failure to provide a parent with their child's records; (b) limiting who can attend an IEP meeting; or, (c) failure to meet evaluation and IEP timelines. When a complaint is received, the SEA must investigate and allow the LEA to respond to allegations. The parent then has the right to amend the complaint. Additionally, the SEA must permit the LEA to enter into dispute resolution if they so choose, with mediation being a viable option for both LEA and parents (§ 300.152(a)(3)(ii)). At the conclusion of the investigation, a written decision issued by the SEA must be submitted 60 days after the date of the initial complaint, unless both parties enter mediation or another form of dispute resolution. IDEA does stipulate a one year statute of limitations for complaints (§

300.153(c)). States may only increase the statute of limitations for the formal complaint procedure (OSEP, 2009). Any state-level administrative appeal of the decision is a matter of state law and enforceable in court. Complaints about private school children being unilaterally placed are exclusively reserved to the formal complaint procedure, except for child find cases (§ 300.140(c)). Moreover, IDEA regulations established mandatory deferral, a procedural formality which prohibits the formal complaint procedure (or any portion of the complaint) that has been raised and is pending in a due process action (§ 300.152(c)(1)). After the due process hearing is completed, the decision is binding for any future complaints or issues from the formal complaint procedure (§ 300.152(c)(2)). However, the deferral procedure and binding effect is considered a one-way street. The hearing officer is not required to, and typically will not exclude an issue that the parent has concurrently submitted to the formal complaint process. Moreover, any decision made through the formal complaint process does not have a binding effect on any subsequent hearing office proceeding (Zirkel & McGuire, 2010).

Limitations to formal complaint procedures. One of the major limitations to the formal complaint procedure route is that it is not commonly known. Most school districts are familiar with the due process route, but not the formal complaint procedure route (Zirkel & McGuire, 2010). Additionally, if the parties cannot resolve the conflict within the formal complaint procedure route, then they end up in the due process route anyway, which can be perceived as a delaying tactic to an actual due process hearing.

Due Process Route

In contrast to the formal complaint procedure route, the due process route is used to challenge factual components of an IEP, such as a student's eligibility or evaluation, a student's placement, suspension or expulsion, change of placement, or related services (Suchey & Huefner, 1998). This route is typically called "due process" due to the culmination in a due process hearing, officiated by an Impartial Hearing Officer (IHO). Resolution sessions, mediation, and due process hearings are all administrative adjudicative routes and will be discussed as they are all similarly used to challenge factual components of an IEP.

Resolution sessions. Resolution sessions are "for the parents of the child to discuss their due process complaint, so that the LEA has the opportunity to resolve the dispute that is the basis for the due process complaint" (IDEA, 2004, 34 C.F.R. § 300.531(2)). In 2004, Congress made resolution sessions mandatory. The LEA must hold an initial resolution meeting within 15 calendar days of the filing of a complaint. After the meeting is held, the complaint must be resolved within 30 calendar days. If the LEA is the filing party, a resolution meeting does not need to be held. The LEA is expected to resolve any dispute without going through due process (OSEP, 2009, p. D-2). In addition, IDEA regulations *discourage* the participation of attorneys by either party, and even a prevailing parent who uses an attorney is not able to recover attorney's fees. Additionally, if the parent does not bring legal representation to the resolution meeting, the LEA may not have legal representation present (§ 300.517(c)(2); § 300.510(a)(ii)).

If the resolution meeting results in an agreement between both parties, the agreement is put into writing, signed, and becomes binding (§ 300.510(d)), unless proven that the agreement violated public policy or was signed involuntarily (Zirkel & McGuire, 2010). If the resolution meeting does not result in an agreement within the stipulated 30 day time frame, the next step is to schedule a due process hearing. There is no stipulation about confidentiality of the resolution meeting agreement. Additionally, if both parties agree to enter into mediation, the resolution meeting can be waived.

Limitations to resolution meetings. While there are many benefits to resolution meetings, there are also several limitations. For instance, there are no federal guidelines as to how the resolution meeting should be conducted. Furthermore, because there is a lack of confidentiality requirement, any evidence presented in a resolution meeting can be used in a due process hearing. Resolution sessions were meant to decrease the use of due process hearings; however, they are still formal meetings that are offered only after a request for a due process hearing has been filed (Mueller, 2009b).

Mediation. In the IDEA Amendments of 1997, Congress required states to adopt voluntary mediation to alleviate the adversarial nature of due process (Yell, 2006). In a paper sponsored by the National Center on Dispute Resolution in Special Education (CADRE), mediation is described as a process that affords all participants a structured opportunity to meet and discuss their concerns and to work collaboratively toward reaching a collective agreement (Feinberg et al., 2002). The purpose of mediation is to resolve disagreements through a trained and impartial mediator, which provides a less formal approach than due process hearings (Mueller, 2009a; Mueller, 2009b; Zirkel &

McGuire, 2010). However, mediation is still considered a formal pathway of the due process route because parties must enter into it voluntarily (§§ 300.506(b)(1)-(2)).

IDEA 2004 stipulated that mediation must be made available prior to, and not just after a party has filed a due process complaint (§ 300.506). If a due process complaint is filed and both parties voluntarily agree to mediation, a meeting must be scheduled within 15 days of receiving the initial complaint, and needs to be resolved within 30 days. If both parties do not agree and a complaint has already been filed, then the next step would be either a resolution session or a due process hearing.

Mediation must follow four requirements: (a) the process must be voluntary for all parties, and is not conducted in an attempt to delay or deny a parent's right to due process; (b) each mediation session is scheduled in a timely manner, and held in a location that is convenient for all parties; (c) all agreements must be documented in writing; and (d) all discussion during the mediation are considered confidential (§ 300.506(c)).

Limitations of mediation. A major limitation of the mediation process is IDEA's requirement that it be a voluntary step in the due process hearing process. Hence, it is questionable whether mediation may be considered merely a prelude to a due process hearing, given that mediation must be offered before a due process hearing, which can hinder an already tense situation between both parties (Feinberg et al., 2002; Mueller, 2009a; Samuels, 2008). The mediation request process can be seen as being primarily reactive instead of proactive because it frequently occurs after a due process hearing request has been made (Mueller, 2009a). Moreover, mediator qualifications and

training are not defined, and often vary state-by-state. IDEA regulations merely specify that mediators be trained in special education law and mediation techniques. In a study conducted by Markowitz et al. (2003), findings regarding mediator requirements and training revealed that there was wide variability across states, which include training and qualifications of mediators, timeline for when mediation is offered, and the length of the mediation meetings. Furthermore, the use of attorneys and advocates risk complicating the collaborative nature of the mediation process (Feinberg et al., 2002; Mueller, 2009a). Attorneys and advocates can sometimes present aggressive questioning and arguments rather than cooperative tactics, which is the premise behind mediation. At this time, no states prohibit the use of attorneys or advocates in the mediation process (Mueller, 2009a), and IDEA does not address the issue.

Due process hearing. The purpose of the due process hearing is to permit a third party (Impartial Hearing Officer) to hear both sides of an argument, examine the evidence and issues, and then settle the dispute (Yell, 2006). Due process hearings are court proceedings where school district personnel and parents participate in a legal procedure to resolve the issue. An IHO officiates the hearing and the decision made regarding the due process complaint is binding. However, either party has the right to appeal the IHO's decision. Currently, parents account for the overwhelming majority of due process complaints (Mueller, Singer, & Draper, 2008; Zirkel & McGuire, 2010). In an examination of due process hearing complaints by Mueller and Carranza (2011), parents initiated 85% of the hearings, but school districts prevailed in 59%.

According to IDEA regulations (§§ 300.511(3)-(f)), the statute of limitations for a due process hearing complaint is within 2 years of the time when the parent first knew or should have known of the supposed “violation”. However, IDEA allows states to adjust this timeline in either direction per state law. For example, in the state of Ohio, the statute of limitations is limited to 1 year (Ohio Department of Education, 2012). A second time limit stipulated by IDEA 2004 is that the “violation” must have occurred within 2 years prior to the date when the parent had knowledge of it (§ 300.507(a)(2)).

IDEA provides each state the choice of which agency will conduct the due process hearing (IDEA Regulations, 34 C.F.R. § 506(b)). Additionally, states can adopt a one- or two-tier hearing procedure. Similar to the formal complaint procedure, a one-tier procedure is conducted by the SEA. Judicial review of the decision made by the state is directly available for filing in state or federal court (Yell, 2006). Conversely, in a two-tier system, the first review is conducted by the LEA and any appeals are made to the SEA. After a decision is reached by the SEA, the case can be appealed in either state or federal court. Zirkel and Scala (2010) discovered that currently 40 states and the District of Columbia use a one-tiered procedure, with many of these states utilizing full-time administrative law judges as the IHOs.

Unless both parties decide otherwise, when a hearing is requested, the stay-put provision is utilized. This means that the student must remain in his or her present educational placement for the duration of the hearing (IDEA Regulations, 34 C.F.R. § 300.513).

Impartial hearing officer. Qualifications specified in the IDEA for an IHO include: (a) impartiality, (b) competence in conducting hearings, (c) knowledge of special education law, and (d) the ability to write legally appropriate decisions (11415(f)(3)(A)). The IHO must have no involvement with either the family, LEA, or SEA, ensuring that the IHO remains objective (IDEA Regulations, 34 C.F.R. §300.507(a) (1), (2)). The role of the IHO, while similar to that of judge, can be limited (Rock & Bateman, 2009). For example, an IHO has broad jurisdiction with regard to identification, evaluation, placement, and FAPE of children with disabilities (§ 300.507(a)(1)). There are, however, a few exceptions, such as when the parent: (a) did not provide written consent to initial services (§ 300.300(b)(2)); (b) disputes services or lack of services for a child whom has been placed in a private school where reimbursement is not an issue (§§ 300.140(a)-(b)); and (c) provides but then revokes consent (§ 300.300(b)(4)). IHO's may reward compensatory education, reimbursement of education expenses, or may order a psychological evaluation, but s/he may not award attorney's fees or money damages (Yell, 2006; Zirkel, 2006). Furthermore, the IHO does not have any authority over outside agencies and s/he can only accept or reject a school's proposed placement, not determine specific placement themselves (District of Columbia Public Schools, 1981).

A decision by the IHO from a due process hearing should be rendered no later than 45 days after the initial request (§ 300.510(c)). In states that use the two-tier system, the time limit is reduced to 30 days (§§ 300.515(a)-(b)). The decision is final unless one of the parties decides to appeal. IHOs cannot be held liable for actions while working in their official capacity. However, IHOs can be sued for damages incurred from action

taken. For example, if an IHO makes a decision that violates a student's constitutional rights, s/he may be held liable for damages (Yell, 2006).

Limitations to due process hearings. There are four major limitations of due process hearings, which include: (a) a 3rd party resolution, (b) a strained relationship between parents and the LEA, (c) monetary costs, and (d) emotional stress (Feinberg et al., 2002; Markowitz, Ahearn, & Schrag, 2003; Mueller, 2009a). The due process hearing results in a 3rd party (IHO) decision, which makes conflict resolution between the two parties very difficult once litigation ensues. The conflict may be resolved through the due process hearing, but litigation can be very costly and cause emotional stress for all involved. This makes the chance of a working, cooperative relationship between parents and the LEA difficult at best (Mueller, 2009a). Parents have indicated that they are concerned about how their children will be treated by school personnel after conflict resolution occurs, with some parents indicating that they are afraid retribution against their child will occur by not only teachers, but paraprofessionals and administrators alike (Mueller, Singer, & Draper, 2008; Nowell, 2007). In addition, parents can be viewed in a negative light by school personnel, further hindering the chance of collaboration (Folger et al., 2000; Opunda, 1999).

A further limitation is that parents can enter due process hearings with or without legal counsel (*Winkelman v. Parma City School District*, 2007). This is a limitation because if attorneys are present, it can further hinder the relationship between school personnel and parents; if not present, parents may not have the legal jargon and knowledge of special education law necessary to fully understand the proceedings. IDEA

(2004) mandates that parent's must pay for the school district's legal fees if it is determined by the court that the action is "frivolous, unreasonable, or without foundation".

Limitations of formal dispute resolution. Limitations of both routes of the formal dispute resolution process have not gone unnoticed by the legislature. Due to the adversarial nature of the formal dispute resolution sessions, IDEA 1997 and 2004 require other alternatives to dispute resolution. These ADR options are outlined below.

Alternative Dispute Resolution

Both routes of formal dispute resolution practices present limitations that can be harmful to a cooperative, collaborative relationship among parents and school personnel. A potentially more effective strategy that a school district can employ is a proactive plan to avoid such conflict (Mueller, 2009a). In many cases, a due process hearing or precursors leading up to a hearing are not the only path to resolution. Identifying and using ADR processes can offer a more effective and cost efficient approach to resolving conflict between parents and school districts. For purposes of this manuscript, ADR is a process that offers both parties the opportunity to resolve disputes collaboratively, and avoid potentially time-consuming and costly litigation (Office of the General Counsel, 2012).

There are numerous ADR processes that districts and states currently employ to create a more cooperative working relationship with parents (Mueller, 2009a). Parents and school personnel are provided an opportunity to resolve conflict without being mandated a decision from a 3rd party. Some of the more frequently used ADR processes

are outlined below, including parent-to-parent assistance, case manager, ombudsperson, and Facilitated Individualized Education Program meetings.

Parent-to-Parent Assistance

Parent-to-Parent support can be used for legal advice, mentorship, and general support from a parent of a child with a disability who has experience with conflict resolution (Mueller, 2009a). The use of parent-to-parent assistance for dispute resolution has more than 20 years of research for families of children with disabilities (Turnbull, Turnbull, Erwin, & Soodak, 2006). This assistance involves matching parents involved in conflict with other parents who have been formally trained to mentor other parents through the conflicting issue. An example of parent-to-parent support would be parents, after a conflict arose regarding their child in special education, contacting their school district to talk with a parent mentor. The district would put the parents in touch with their parent-to-parent assistance program. The program would match the parent that called with a parent who experienced a similar conflict. The matched parent mentor would contact those parents and discuss the conflict, then provide them with suggestions based on a combination of his/her knowledge of the law and own personal experiences.

Case Manager

Once a due process hearing or formal complaint is filed, the parents are provided with a case manager (Mueller, 2009a). The responsibility of the case manager is the oversight of the conflicting issue. The case manager is responsible for analyzing the disputed issue, answering any legal questions the parents present, and conducting an investigation of the conflict to best recommend an appropriate dispute resolution path.

Collaboration is encouraged because alternate paths to dispute resolution are explored. The case manager's role is more informal than that of a mediator (Mueller, 2009a). After the case manager has spoken with all interested parties related to the conflict, s/he will recommend a particular plan for resolution.

Ombudsperson

An ombudsperson is different from the other forms of ADR outlined. The other approaches are strategies that empower both parents and school personnel to agree and collaborate together to reach a resolution (Mueller, 2009a). In contrast, an ombudsperson is a neutral 3rd party who *recommends* a resolution to the conflict. Through investigation, the ombudsperson researches special education law, talks with all involved parties, and then proposes a solution to both sides. The ombudsperson would meet individually with both parties to hear their concerns, and would also review the student's special education file. After all data are collected, the ombudsperson would suggest a resolution to the conflict to both parties to see if an agreement could be reached, without utilizing a formal dispute resolution route.

Facilitated IEP

According to Mueller (2009a), one of the more promising ADR strategies being used by many states is facilitated individualized education program meetings (FIEP meetings). Heated exchanges between school personnel and parents may occur during IEP meetings. In FIEP meetings, a trained facilitator assists with the meeting process by developing an agenda, goals, ground rules, and fostering open communication throughout the meeting (Mueller, 2009b; Reiman et al., 2007). The meeting is still run by the parents

and school officials, but the facilitator maintains order and keeps the meeting focused. Some call this a flexible alternative to mediation (CADRE, 2004) that provides parents and school personnel with the chance to address concerns immediately at an IEP meeting without filing an official complaint. The facilitator must maintain impartiality, should be trained in the process of facilitation, and must have knowledge of special education regulations and the IEP process. However, the facilitator is not an IEP team member, a decision maker, or the chair/scribe for the meeting (CADRE, 2004).

Statement of the Problem

Current cost estimates for due process hearings are estimated at \$50,000 to cover attorney and other legal fees. If a case is appealed, costs can escalate to as high as \$100,000 (Teacher Paperwork Reduction Act, 2002). However, the costs incurred are not just monetary in nature. Research indicates there are negative repercussions for parents, school personnel, and most importantly the student when conflict is present. Parents have reported high levels of stress and dissatisfaction when embroiled in a legal dispute with a school district (Lombardi & Ludlow, 2004; O'Shea, Bateman, Algozzine, & O'Shea, 2004). Legal disputes may also impede a positive, collaborative relationship between school personnel and parents (Mueller & Carranza, 2011; Rock & Bateman, 2009). Moreover, the outcomes of these hearings are often disappointing for both parties (Mills & Duff-Mallams, 2004; Zirkel, 2008). Research regarding ADR has been promising. Such alternative strategies could potentially lead to fewer due process hearings and formal complaints, improved relations between the parents and school personnel, and ultimately increase learning opportunities for the student (Mueller, 2004).

Significance of the Study

This study examined the different types of ADR utilized across the states, specifically FIEP meetings, and determined what data were collected regarding the use and effectiveness of such ADR meetings. Conflict in special education between parents and school personnel interplay with one another, which can create strained relationships that indirectly and directly impact the student's academic progress. Making important decisions and developing a plan to execute those decisions can be difficult on one's own. Making these decisions with others, especially when different viewpoints are held, is further complicated. However, conflict prevention and ADR practices, specifically FIEP meetings, could lead to a decrease in the amount or degree of conflict between home and school. Currently, over 25 states voluntarily utilize some form of facilitation as an ADR. Results from informal surveys and interviews with district/state personnel directly involved with FIEP meetings indicate that the support provided by a facilitator can help align diverse viewpoints (Hedeen, Peter, Moses, & Engiles 2013). An effective facilitator can assist the group by providing clear communication for all stakeholders through a structured, focused process. However, the research for FIEP meetings is scant and more information is needed regarding the availability and process each state undergoes to conduct these meetings.

Purpose of the Study

The purpose of this study was to examine if states utilize FIEP meetings and if so, determine what data were collected regarding the use and effectiveness of such ADR meetings. This ADR option was investigated through survey data from across all states

in the United States. Special education representatives from each state in the union were sent a questionnaire to complete regarding ADR strategies available and utilized in their respective state. This study investigated one major research question, which included multiple parts. Based upon a national survey of state departments of education offices of special education, for those states who offer FIEP meetings as a dispute resolution option, what are: (a) the parameters (e.g. years, availability, attorney, participants, funding) of its use?; (b) the backgrounds, minimum qualifications and trainings required for Facilitators?; (c) the data collected and how are those data reported related to FIEP meetings?; and (d) the impact of FIEP meetings on the number of mediations, due process hearings, formal complaints, and resolution sessions held by the states and the strengths/limitations perceived in regard to holding these meetings?

CHAPTER TWO

LITERATURE REVIEW

Regulatory compliance and litigation costs related to IDEA's dispute resolution framework, specifically due process mediation and litigation, has been estimated to cost public school districts approximately \$146 million each school year (Hirsch, 2009). Experts say the figure will continue to rise. In some cases, the resolution of a single dispute can cost a district a small fortune, and attorneys' and administrative fees dwarf the price of the services under dispute. Zirkel (2006) reported that over \$20,000 was spent on a stenographer for just one court case. Hirsch (2009) reported that in Madison County Schools, an excess of more than \$300,000 was spent on attorney fees alone in one fiscal school year.

Dispute resolution processes are necessary when conflict arises between parents and school personnel. For purposes of this manuscript, conflict is defined as, "the interaction of interdependent people who perceive incompatible goals and interference from each other in achieving these goals" (Folger, Poole, & Stutman, 2000, p.5). The authors of the IDEA, with each reauthorization, continue to recognize the importance of parental involvement. However, this continued emphasis of parental involvement can breed conflict as parents and school personnel try to work together to create an educational plan appropriate for the special education student. In 2004, Congress reauthorized IDEA, emphasizing the spirit of the law (i.e. the substantive aspects of special education) with more attention on accountability, improved educational results for students in special education, and a concentrated effort on including parents in special

education decisions (Yell, 2006; Yell & Katsiyannis, 2001; Yell, Shriner, & Katsiyannis, 2006). Despite the fact that parent participation is mandated by law, parental roles have not necessarily increased during IEP meetings (Valle & Aponte, 2002) and positive relationships between parents and school personnel have not been ensured (Fish, 2006). The lack of parental involvement in the development of and participation in IEP meetings has unfortunately sometimes resulted in the development of legally inappropriate and unsound educational programs for students in special education, specifically in regard to ensuring a FAPE (Fish, 2008). Two important U.S. Supreme Court cases that illustrate the increasing importance of parental involvement in regard to FAPE are the *Board of Education v. Rowley* (1982) and *Winkelman v. Parma City School District* (2007). A brief overview as well as critical findings from each of these rulings is provided, followed by a discussion of additional parental rights afforded through litigation.

Parental Rights and the Supreme Court

Board of Education of Hendrick Hudson Central School District v. Rowley (1982)

In *Hudson v. Rowley* (1982), the U.S. Supreme Court set the standard for determining whether an IEP is suitable for providing a child with a disability a FAPE. Amy Rowley was a student identified as deaf in Hendrick Hudson Central School District in New York. Prior to her school attendance, her parents and school personnel decided to place Amy in a general education class to determine what supplemental services she would need. It was later decided she would be provided with a hearing aid, and she completed her kindergarten year without difficulty. When she began first grade, a new IEP was prepared. The IEP stated she would be in a general education class, receive a

hearing aid, be provided instruction from a tutor for the deaf, and a speech therapist. Her parents agreed to this, but also requested a sign language interpreter in her class.

However, during her kindergarten year, the sign language interpreter reported that Amy did not need his services after a two-week trial period. The school concluded that Amy did not need the interpreter during her first grade year, after considering testimony from professionals familiar with her academic progress. The Rowleys filed for a due process hearing and the examiner also agreed that an interpreter was not necessary because Amy could perform well academically and socially without assistance. The Rowleys then brought the case to the district court, claiming that the denial of a sign language interpreter was a violation of a FAPE.

The district court agreed with the Rowleys. The case went to the appellate court, which also agreed with the district court. However, the school district filed with the Supreme Court, which ruled that a sign language interpreter was not required for Amy Rowley as she received an education sufficient to derive some educational benefit (Yell, Katsiyannis, & Hazelkorn, 2007). The Supreme Court, as a result of the Rowley case, established a two-part test for judges/courts to use when reviewing FAPE disputes, which includes: "(a) Has the state complied with the procedures set forth in the IDEA; and (b) Is the IEP reasonably calculated to enable the child to receive educational benefits" (*Board of Education v. Rowley*, 1982, pp. 206-207). This two-part test provides "...parents and guardians a large measure of participation at every stage of the administrative process" (*Board of Education v. Rowley*, 1982, p.205). The Supreme Court continues to support parental involvement by stating, "...parents and guardians will not lack ardor in seeking

to ensure that handicapped children receive all the benefits to which they are entitled by the Act” (*Board of Education v. Rowley*, 1982, p.208). This ruling by the Supreme Court strengthened parental participation in the IEP process.

Winkelman v. Parma City School District (2007)

In *Winkelman v. Parma City School District* (2007), the Supreme Court ruled on the right of parents under IDEA to pursue claims in court without an attorney (pro se representation). In this case, the parents of 6-year old Jacob Winkelman disagreed with the school district’s proposed IEP, which called for placing their son with autism in a public school. The parents felt their child had been denied a FAPE and requested an impartial due process hearing to discuss the conflict. After the hearing officer ruled in favor of the school district, Jacob’s parents filed a complaint on their own behalf to the U.S. District court for the Northern District of Ohio which also ruled in favor of the district. The parents then appealed to the U.S. Court of Appeals for the Sixth Circuit which dismissed the Winkelman’s appeal until they could secure legal counsel for the case. The Winkelmans then appealed their case to the U.S. Supreme Court, who granted judicial review to settle the conflict regarding the rights of parents not represented by legal counsel to pursue IDEA claims in federal court. In May of 2007, the high court ruled parents have the right to pro se representation on behalf of their child (*Winkelman v. Parma City School District*, 2007, p. 533).

Parental Rights

In addition, the Supreme Court referenced specific IDEA provisions regarding parental involvement. Specifically, (a) procedures for developing a child’s IEP, (b)

criteria governing the sufficiency of the child's education, (c) mechanisms for review when objecting to the IEP or other IDEA proceedings, and (d) reimbursement of expenses (*Winkelman*, 2007, p. 523). Table 2.1 provides an outline of these provisions.

Conflict

When disputes cannot be settled between parents and school personnel regarding the services required for students with special needs the courts are often called upon to resolve specific issues. Differences of opinion are foreseeable between parents and school personnel involved with the student. It is not always clear as to what is sufficient and/or legal when discussing and planning services to best meet the educational needs of students with disabilities. Opinions and beliefs regarding what is in the student's best interest may not be the same for

Table 2.1

The Supreme Court and Parental Rights as Outlined from Winkelman v. Parma (2007)
Parental Rights **Statutory Provision**

Procedures for Developing a Child's IEP

| | |
|---|---------------------|
| Parents are to be active members of the IEP team | § 1414(d)(1)(B)(i) |
| Parental concerns must be addressed by the IEP team | § 1414(d)(3)(A)(ii) |
| The IEP must be revised by the IEP team to attend to information provided by the student's parents | § 1414 (d)(4)(A) |
| States must guarantee that parents are part of any group that makes placement decisions for their child | § 1414(e) |

Mechanisms for Review When Objecting to the IEP or Other IDEA Proceedings

| | |
|--|---------------------------------|
| Opportunities must be present for parents to complain if there is disagreement regarding the evaluation, identification, placement, or provision of a FAPE for their child | § 1415(b)(6) |
| A preliminary review meeting must be made available where parents can discuss the conflict, thus providing school personnel the chance to remedy the situation | § 1415(f)(1)(B) |
| If a situation is not remedied to parents' satisfaction, an impartial due process hearing may be requested before a hearing officer | § 1415(f)(1)(A) |
| If parents do not agree with the impartial hearing officer, parents can appeal to the state educational agency | § 1415(g)(1) |
| If parents do not agree with the state educational agency, parents can file a civil action in federal court | § 1415(i)(1) § 1415(i)(2)(A) |

Reimbursement of Expenses

| | |
|--|-----------------------|
| If the state fails to provide a FAPE for a child with a disability, parents may be reimbursed for the cost of private school | § 1412(a)(10)(C)(ii) |
| If parents win in court, may be awarded attorney's fees | § 1415(i)(3)(B)(i)(I) |

**Adapted from Conroy, Yell, Katsiyannis, & Collins (2010)*

all involved. This can create conflict for the student, parents, school personnel, even the entire organization. While disputes are common within the field of special education, the manner in which personnel and families address these issues can result in conflict. School personnel state they are not always effectively prepared to, nor comfortable with handling conflict (Brand, 1996; Katz & Bauch, 1999; Tichenor, 1997). Research regarding factors that create conflict and establishing positive relationships and partnerships amongst parents and school personnel suggests that conflict often arises during the IEP meeting concerning issues of FAPE (Mueller & Carranza, 2011; Zirkle, 2008). Specific issues include difficulties in acquiring appropriate services, information regarding specialized services, and quality of the IEP (Mueller, Singer, & Draper, 2008). Survey findings suggest that allowing enough time to hold the IEP meeting may be prerequisite to participation (Witt, Miller, McIntyre, & Smith, 1984). Insufficient time may necessitate that teams spend much of their time complying with legal requirements (e.g., evaluation time limits, eligibility), which may prevent collaborative problem solving. Short meetings may interfere with the participation of all stakeholders and reduce the open exchange between parents and school personnel to the completion of legal documents. Parents indicated that it is difficult or impossible to have open dialogue and share ideas if the time for an IEP meeting is limited; time constraints can result in unilateral decision making by school personnel.

Parental Perceptions of IEP Meetings

To date, there have been relatively few empirically based studies investigating conflict between parents and school personnel during the IEP meeting. Much of the

literature has focused on how due process hearings can damage parent-school relationships and tout the benefits of ADR methods, which are not always based on empirical research (Lake & Billingsley, 2000). There are, however, a limited number of interview and survey studies available regarding parents' perceptions of their involvement in IEP meetings, which are outlined below. To locate these articles, a search was conducted utilizing: Academic Search Alumni Edition, Academic Search Complete, Academic Search Premier, Education Full Text (H.W. Wilson), Education Research Complete, ERIC, Primary Search, PsycARTICLES, PsycCRITIQUES, Psychology and Behavioral Sciences Collection, PsycINFO, Teacher Reference Center, and PsycTESTS. In this search, the following keywords were utilized: *parental perceptions of IEP meetings, parental rights, IEP meeting perceptions, and special education meeting perceptions.*

In the first study identified, interview data collected from 22 parents of students in special education, along with 16 school officials and 6 mediators working in special education, indicated there are 8 primary factors that can either escalate or deescalate conflict between parents and school personnel. These include discrepant views of a child or a child's needs, knowledge, service delivery, constraints, valuation, reciprocal power, communication, and trust (Lake & Billingsley, 2000). Conflict can occur until discrepant views between parents and school personnel are decreased or diminished altogether. Participants indicated that by including parents' views on educational goals during IEP meetings, opposing views can often be minimized. It was also noted through survey data that parents want educators to be knowledgeable about their child as a whole person, not

just in respect to their disability. Parents also wanted more knowledge to be available and presented to them before or during the IEP meeting regarding available services. Additionally, constraints on time allocated in meetings for parents to share information in a reciprocal manner about their child made them feel inferior. In this particular study, parents stated that trust must be maintained with school personnel because once broken, it can be very difficult to regain. Responses indicated that by responding to conflict early and by keeping the lines of communication open, trust can be maintained between all parties (Lake & Billingsley, 2000).

Similar findings were reported in the second study identified. This study was conducted at a large midwestern university where questionnaires to parents of a child or young adult with a disability were distributed (Garriott, Wandry, & Snyder, 2000). Major findings from this study were that parents want: (a) quality communication with school personnel, (b) knowledge of the IEP process and involvement with the writing of the IEP, and (c) satisfaction with the IEP and relationships with school personnel.

In regard to quality communication, 89% stated they always attended their child's IEP meeting to provide input to the decision making team fulfill their parental responsibilities and to be an advocate for their child. Responses regarding IEP knowledge and involvement were classified into three different groups, with 46% stating always, 24% stating usually, and 27% stating sometimes or never felt they had ample, direct input in the formation of IEP goals and objectives. Of the 46% who stated always, responses indicated that teachers encouraged active participation from the parents, input was sought from parents by educators, and teachers were willing to provide a draft IEP prior to the

meeting. Parents who indicated they usually had input stated they felt this way because the goals and objectives of the IEP were already developed prior to the meeting and if input was sought, it was not consistently incorporated into the goals and objectives of the IEP. Of the 27% who stated that they sometimes or never felt they had ample, direct input into the formation of IEP goals and objectives, frustration was derived from goals and objectives that were pre-written and their input was either not heard or disregarded by school personnel.

Questions pertaining to parental satisfaction yielded responses categorized into three different camps with 45% indicating they were always treated as an equal, 27% indicating usually treated as an equal, and 27% indicating sometimes or never being treated as an equal. Of the 45% who stated always treated equally, parents specified that educators were willing to listen to parental input and ask for parental opinions. Moreover, parents felt that school personnel supported and were committed to a strong parent/professional partnership. Conversely, of the 27% of parents who indicated they usually were treated as equal members felt they needed to demand respect from school personnel and felt as if they had to prove to educators that they had parental expertise regarding their own child. The remaining 27% of parents who felt that they sometimes or were never treated as an equal stated they felt useless or inferior because the IEP was written prior to the meeting without their input and guidance.

Results from this study yield both encouraging and discouraging news for school personnel involved with the planning and execution of IEP meetings. While many parents stated they attended meetings and felt like an integral part of the planning

process, almost half of the parents did not feel they were valued members of the IEP planning team. Of these parents, most reasons were focused on goals and objectives being written prior to the meeting without parental input or guidance.

In a third study identified regarding parental perceptions, survey results mirror the results yielded from Garriott et al. (2000). Parents of 45 children with autism or related pervasive developmental disabilities participated in an interview study conducted by Spann, Kohler, and Soenksen (2003). Questions were centered upon three central themes: (a) communication with school personnel, (b) IEP knowledge, involvement, and satisfaction, and (c) school personnel and services.

Eighty-two percent of parents interviewed indicated moderate satisfaction with home-school communication, with 18% indicating low satisfaction. Parents referenced communicating with their child's paraprofessional and special education teacher, but not the general education teacher or administrator(s). Moreover, many parents reported that communication involved conflict regarding differences of opinion on discipline or school personnel's failure to respond to a parent's question or request in a timely manner. Parents indicated that they felt they were the primary force in corresponding with school personnel.

Over half (56%) of parents interviewed reported moderate levels of involvement, with 33% reporting high and 11% reporting low levels of involvement. Additionally, nearly three quarters (73%) of parents reported moderate levels of satisfaction with the IEP process while 13% expressed high levels of satisfaction and 14% expressed low

levels of satisfaction with the process. Several parents indicated that they were unable to contribute to the IEP process because the document was written prior to the meeting.

Parents' satisfaction with school personnel and services was also mixed. Approximately 25% of parents expressed high satisfaction and 47% indicated moderate satisfaction; however, 29% stated low satisfaction. The most noted area of low satisfaction was the perception that school personnel were not addressing their child's most pressing needs. Forty-four percent of parents interviewed stated that schools were doing little or nothing to help their child from a holistic perspective (emotionally, socially, and academically).

As with previous survey and interview data reported above, parents were generally satisfied with the quality of special education services and IEP meeting procedures. However, some parents felt they were the ones driving the communication with the school and their input was not included in the writing of goals and objectives for their child's IEP.

In a fourth study, findings from Fish (2008) are consistent with those of Garriott et al. (2000) and Spann et al. (2003). Fish (2008) surveyed 51 parents of students with disabilities, with most of the students enrolled in elementary school and receiving special education services in resource or a self-contained classroom setting.

One area researchers examined concerned communication between parents and school personnel. Parents were asked whether educators (a) maintained positive relationships with them, (b) provided a welcoming atmosphere, and (c) treated them as equal partners in IEP meetings. Fifty-one percent of parents agreed and 20% strongly

agreed that IEP team members maintained positive relationships with them during IEP meetings, while 4% disagreed that IEP team members maintained these positive relationships. Parents who agreed and strongly agreed about positive relationships indicated that educators treated them as equal partners because they respected and valued their input regarding goals and objectives on the IEP and provided them the opportunity to openly discuss their child's education program during the meeting. These results are consistent with Garriott et al. (2000).

Most parents responded favorably to the question regarding whether their involvement benefited the IEP meetings, with relatively few (2%) parents indicated that previous IEP meeting experiences did result in their becoming less involved in their children's education. Twenty-two percent of parents responded that they would like substantially more influence and 35% wanted more influence in the IEP meetings. None of the participating parents indicated they wanted to have less influence in the IEP meetings Fish (2008) found that 39% agreed and 24% strongly agreed that they had a clear understanding of the IEP process. These results are consistent with Spann et al.'s (2003) study that concluded that 78% of parents indicated that they exhibited a moderate to high level of knowledge of IEP documentation.

In open-ended survey questions regarding satisfaction with IEP meetings, the most frequent responses provided by parents were increased parental participation, more parental training on special education law, and more observance of educators to IEP protocol. Additional comments noteworthy were educators should be truthful and school personnel should not predetermine IEP objectives prior to the IEP meeting. Moreover,

parents stated they should be more proactive during IEP meetings by asking more questions and making suggestions.

Discussion of Parental Perceptions of IEP Meetings

Data collected from parents through interviews and surveys by multiple researchers yielded very similar results. Most parents indicated that they were satisfied with home-school communication. However, approximately 20% of parents in one survey and 4% of parents in another survey did perceive they were the driving force behind the open communication. Of those parents not satisfied with home-school communication, reasons cited included differences of opinion on discipline or school personnel's failure to respond to a parent's question or request in a timely manner, which also included not seeking input from parents' regarding IEP goals and objectives. Clear and honest communication about the child by school personnel was rated high by all parents questioned. School personnel should continue to openly discuss a child's strengths and challenges, and seek input from the parents about their child's educational program.

A majority of parents held favorable views toward their knowledge of, involvement in, and satisfaction with IEP meetings. However, in two of three studies discussed above, approximately one fourth of the parents stated they did not always feel as a valued and equitable member of the team. A common theme across both survey and interview answers was parents did not feel valued when IEP goals and objectives were written prior to the IEP meeting. Additionally, most parents indicated that IEP meetings were executed in a satisfactory manner; nevertheless, some parents did perceive

themselves as inferior and IEP meetings as being contentious. Ensuring that enough time is allocated for each IEP meeting and that school personnel seek parental input regarding proposed educational outcomes for students can reduce conflict. Specific topics that can increase conflict between members of the IEP team, as identified by parents, included disagreement regarding disciplinary actions, failure on a part of the school to respond to a parental concern/complaint in a timely manner, and issues of a FAPE.

Mediation and Facilitation

Parental rights have increased dramatically since the inception of the IDEA. Parents are expected to be integral members of their child's IEP team, which has been strengthened through legal decisions and continued reauthorizations of special education law. Nonetheless, with increased parental involvement, conflict between parents and school personnel is inevitable. To maintain positive parent-school relationships, Congress implemented procedural safeguards for parents, including provisions in lieu of proceeding to court for disagreements. Two of these options are mediation and facilitated IEPs (FIEP meetings).

Emphasis on mediation became a trend in U.S. legal practices across many disciplines due to the cost of litigation and emotional burden for all parties involved in the dispute resolution process. Federal courts have encouraged arbitration over litigation, and mediation has become increasingly popular in several legal fields where conflict is prevalent, including the fields of divorce and medical practice (Shortt, Douglas, & McLain, 2000; Sohn & Bal, 2011). Jessani (2010) found that the number of mediators in New Jersey available for divorce disputes grew four fold in the last 15 years. In a recent

meta-analytic study of divorce mediation, researchers found that mediation has been shown to be superior to litigation in dealing with divorce cases (Pickar, 2011).

Additionally, in the medical field, a meta-analysis of dispute resolution processes yielded data regarding mediation that boasts a 75% to 90% success rate in avoiding litigation.

This has resulted in a cost savings of \$50,000 per claim while maintaining a 90% satisfaction rates among both plaintiffs and defendants (Sohn & Bal, 2012). Several states, following success from other disciplines, began utilizing mediation in special education before the IDEA included it as a mutually voluntary process for parents and school personnel to utilize in lieu of the due process hearing or the formal complaint procedure in 1997 (§§ 300.506(b)(1)-(2)). For example, in Massachusetts, mediation became part of the dispute resolution framework in 1976; in Pennsylvania, mediation began in 1988 (D'Alo, 2003).

For this review, an analysis of dispute resolution options was conducted. To delineate the review, an EBSCO Multiple Database search was conducted, which included: Academic Search Alumni Edition, Academic Search Complete, Academic Search Premier, Education Full Text (H.W. Wilson), Education Research Complete, ERIC, Primary Search, PsycARTICLES, PsycCRITIQUES, Psychology and Behavioral Sciences Collection, PsycINFO, Teacher Reference Center, and PsycTESTS. In this initial search, the following keywords were utilized: *special education mediation*, *facilitated IEPs*, *alternative dispute resolution (special education)*, *dispute resolution (special education)*, *special education litigation*, and *special education due process*.

These search terms were targeted because they encompassed the various dispute resolution methods found in the literature.

Next, an archival hand search of 4 professional journals, in tandem with an extensive search of The National Center on Dispute Resolution in Special Education (CADRE) website, was conducted to ascertain articles related to ADR options and authors who typically publish on this topic. These journals were selected because they commonly publish articles related to legal and policy issues. The list of journals included: *Exceptional Children*, *Journal of Special Education Leadership*, *Preventing School Failure*, and *Remedial and Special Education*. Journal reviews were conducted between 1997 and present day. Additionally, an ancestral search was conducted on the articles already identified by the measures described above. Once articles were identified, the following criteria were applied for inclusion in the study: (1) the article reported results from a survey or interview investigating dispute resolution options, and (2) the study must have occurred in the United States.

A total of 5 studies met criteria for inclusion in the review. A list of these studies are contained in Table 2.2. The studies used either survey or interview data to determine perceptions of involved parties regarding dispute resolution options. An examination of these articles, with a discussion of each, is in the sections below.

Table 2.2

Literature Review Matrix

| Study | Research Question(s) | Research Methods | Data Sources | Findings |
|-----------------------|--|-------------------------|---|--|
| Schrag & Schrag, 2004 | To determine the use and effectiveness of conflict resolution procedures. | Survey | State database search, 250 questionnaires sent to parents and school officials. 44% response rate from parents and 58% response rate from school officials (51.2% total). | 51% of mediation cases filed reached an agreement; 1/3 of parents stated they would not use ADR again: (1) Did not enhance their child's education, (2) Solutions were ineffective or not implemented, and (3) Decisions/corrective actions were not effective. |
| Welsh, 2004 | What do individual disputants want and expect from the mediator and from the mediation process? After the process concluded, what do the disputants perceive as "value-added?" What parts of the process or what mediator interventions raise particular concerns? | Interview | 70 interviews with parents and school district officials in cases mediated by Pennsylvania Special Education Mediation Services. | Themes: (1) Importance of thorough, evenhanded process with opportunity to speak, be heard, and understood. Appreciated sensitivity to mediators' understanding of issues, (2) Importance of progressing toward resolution, (3) Importance of procedural justice and resolution. |

| | | | | |
|--------------------------------------|---|--------------------------------------|---|---|
| Nowell & Salem, 2007 | How do parents feel that their relationship with the school has been affected by mediation? What influenced this perceived impact? | Qualitative case comparison approach | Semi-structured interviews with 7 parents of students who participated in special education mediation programs | Parents' perceptions: (1) <i>interpersonal relationships</i> with school personnel, and (2) <i>parents' sense of efficacy</i> in working with the school. |
| Hazelkorn, Packard, & Douvanis, 2008 | To determine perceptions of special education directors in GA, MA, WA, and WI regarding ADR in which they had been involved between 1997 and 2004. | Survey | 260 special education directors were surveyed utilizing a 15 item questionnaire (40% response rate). | Findings indicate that districts are less likely to use due process and are using mediation because they are pleased with the outcome. Will use resolution sessions as an option in the future. |
| Mueller, Singer, & Draper, 2008 | What were the systemwide problems that contributed to parental dissatisfaction and subsequent due process hearing requests? What systemwide changes helped to prevent conflict and reduce the rate of special education litigation between the parents and school districts? | Qualitative-case sampling | Special education documents, observations, and interviews with 31 district personnel, parents, and confirming case professionals from 2 different school districts. | Themes: (1) Lack of leadership, (2) not keeping up with the law, and (3) parents excluded. |

Four out of five studies included in the literature review questioned parents either through a survey or interview process. Schrag and Schrag (2004), building on work from an earlier study, sent out satisfaction surveys to parents and school officials in seven states (Pennsylvania, Connecticut, Maine, Kentucky, Alabama, Colorado, and Arizona). These states were chosen because they had a semi-structured database containing information about dispute resolution and their state population size and geographic distribution of their strata are generalizable. Approximately 51% of mediation cases filed reached an agreement; however, approximately one third of parents that utilized dispute resolution stated they would never use the process again. Reasons included that the outcomes of the session did not enhance their child's education, solutions worked out in the mediation agreement were ineffective or never implemented, or decisions made in the session were not effective. One in four (24%) of first time users of mediation stated they would use it again, which includes parents and school personnel. This lower percentage rate may reflect a combination of the highly varied success rates that mediation has with different issues and the lack of clearly defined rules and procedures (Schrag & Schrag, 2004). There were 128 cases interviewed, but 28 disputes were withdrawn. The most common reason provided (46%) was the use of local resolution procedures, which occurred in IEP meetings, with team intervention, school personnel participation, and/or early resolution activities.

Results obtained in the study conducted by Welsh (2004) were more positive toward mediation than in the Schrag and Schrag (2004) study. Welsh (2004) held 70 pre-

and post-mediation interviews with 70 parents and school district officials in cases mediated by Pennsylvania Special Education Mediation Services. Moreover, all individuals agreed to a follow up interview 18 months after the mediation occurred to determine long lasting effects of the mediation process. Pre-mediation responses revealed that from the school district's perspective, there was a desire to be understood; that the mediator would serve as a translator for the district and their program decisions, helping the parties to resolve the problem. From the parent's perspective, two goals were uncovered: (a) a legally fair solution to the problem, and (b) the development of positive working relationships coupled with a sense of shared responsibility. In post-mediation interviews, neither the parents nor district personnel viewed success in terms of a celebration of the child. Success or failure was typically linked to whether an agreement was reached and how future disputes would be resolved between the parties. Welsh (2004) surmised this data as both parties seeking a procedurally and substantively just process that promotes positive emotional relationships and benefits, focused on the child. Three major themes emerged from the data collected, and each theme will be discussed in detail in the sections that follow: (a) the importance of a thorough, evenhanded process with the opportunity to speak, be heard, and understood, (b) the importance of progressing toward resolution, and (c) the importance of procedural justice and resolution. Both parents and school personnel appreciated the mediators' understanding of issues, the importance of progressing toward resolution, and the importance of procedural justice and resolution.

Theme 1: Importance of a thorough, evenhanded process with the opportunity to speak, be heard, and understood. During pre-mediation interviews, parents and school personnel alike discussed the significance of being heard, understood, and having the opportunity to speak. However, their reasons were different. Parents indicated they wanted to be heard by the school district officials and expected that undergoing the process of mediation would make this occur. Collectively, parents perceived the mediation process would offer them an enhanced opportunity to explain their child's specific needs and potential, which in turn would aid school district officials in considering this information when planning educational outcomes for their child. Parents also anticipated that the mediator, being neutral and objective, would be able to hear and understand what they were trying to communicate. Henceforth, the mediator could act as translator to assist the district personnel with understanding their (the parents) point of view.

School district personnel parroted parents' pre-mediation perceptions of mediation as an option that could enhance the parents' voice, therefore improving the quality of discussions held during IEP meetings. Specifically, district personnel anticipated parents would receive assistance with speaking and being understood, possibly utilizing the mediator as a translator in order to be understood. Surprisingly, district personnel did not express the need for mediation as an option for their voice to be heard by parents. The desire for voice did not involve expressing their perceptions; rather, mediation was seen as a viable option for parents with needed education regarding

policy and procedures related to special education to have assistance from a third party to help them articulate their wants and desires for their child's educational program.

In post-mediation interviews, all but one of the parents and one of the school district personal expressed satisfaction with the mediation process. In the interviews that occurred with parents, mediators were seen as a meaningful presence. Parents felt that the mediator afforded them the opportunity for their voice to be heard. In congruence with their pre-mediation interviews, parents discussed the ways in which mediation enhanced their ability to express themselves and the school official's ability to consider their views. In this sense, parents saw mediators as translators and neutral advocates. If resolution was reached, parents indicated the value of a thorough process that provided sufficient time for their voice to be heard when developing their child's education program.

School officials also indicated in post-mediation interviews, the opportunity for voice and consideration in mediation. All school officials interviewed agreed that the mediators' unbiased opinion provided both parties an avenue to state their case and be heard. Consistent with pre-mediation interviews, district officials appreciated that parents had an opportunity to voice their concerns, with a neutral third party individual present. School officials consistently praised mediation because this forum allowed both sides to achieve clarity of the conflict and problem solve more effectively.

Eighteen month follow-up interviews with both parties revealed that parents, if a resolution was made, were still pleased that their voice was heard. However, if a

resolution was not made, they were dissatisfied with the process, but did not blame the mediator for the lack of resolution. Parents lay the blame on the school officials, stating they did not enter mediation in order to listen, but entered as a formality. School officials, however, overwhelmingly still considered mediation as a process in which parents could utilize a third, neutral party as a way to understand special education policy and procedures, to then understand and accept the district's education proposal for services, regardless of the resolution that was reached.

Theme 2: the importance of progressing toward resolution. In pre-mediation interviews, parents overwhelmingly expressed the desire to come to a favorable resolution of their disputes through mediation. They explained that one school officials heard what they were trying to communicate, they would recognize the inadequacy of the goals, objectives, and related services they were proposing to provide their child. School officials reverberated parents' value of mediation in pre-mediation interviews as an option to achieve resolution, either through the development of a mutually accepted agreement or through the parents' understanding of policy and procedure related to special education (with the help of the mediator as a translator); therefore, abandoning their challenges and accepting the officials' proposal. As parents perceived mediation as an option for helping district personnel understand that they wanted their voice to be heard regarding their child's unique needs and potential, school officials perceived mediation as a means to educate parents on policy and procedures and problem solve within those constraints. It seems that school officials' desire to reach a resolution with

parents was contingent upon parents' accepting the school officials' proposal after the mediator explained special education policy and procedures to the parents in a non-threatening manner. Thus, the school officials saw the mediator's role as a way to help reconcile the parents to this reality and help all parties problem solve within these constraints.

Post-mediation interviews with parents unveiled appreciation for mediators' efforts to try and reach specific agreements toward the conflict. Not surprisingly, however, parents' level of satisfaction appeared to be dependent upon the end result of the mediation. The failure to reach resolution almost always was noted as a source of contention with the mediation process. When a resolution was not reached, however, most parents blamed school officials, not the mediator. Reasons included school officials not really listening to parents' voice and intimidating teachers into not really speaking their mind in fear of losing their jobs. It was repeatedly stated by parents that when resolution was not reached, school officials did not enter mediation with the right intentions (e.g., they did not open to listening to the parents' views).

Eighteen months after mediation occurred, many parents were more focused on whether mediation resolved the conflict. Even though a specific agreement had been reached and implemented, parents indicated that misunderstanding and a lack of trust still lingered. In contrast, school officials were still cognizant that the mediator focused upon clarifying the conflict and trying to resolve the dispute. School officials saw the real goal

of mediation as a means to come to an amicable agreement regarding the child's educational program, not necessarily improved relations with the parents.

Theme 3: The importance of procedural justice and resolution. Procedural justice (Welsh, 2004) was defined as the idea of fairness in the processes that resolves disputes and allocates resources. Pre-mediation interviews from both parties indicated they felt mediation would provide procedural justice to the conflict at hand and both expected a resolution at the conclusion of mediation.

In every case but one, mediators used the technique of caucus (private meetings with the mediator), which through interview data emerged as either enhancing or diminishing parties' perception of procedural justice. This theme emerged from post-mediation interviews, in accord with interviews occurring 18 months after mediation occurred. School officials in post-mediation interviews indicated that the mediator was integral as a conveyor of information, presenting both sides and not putting any particular party in a direct line of conflict. In contrast, parents often saw the caucus for its consistency or inconsistency with their desire for a procedurally just process. Many parents did not like that the mediator spoke for them to district personnel without their presence, expressing the feeling that this was not a great example of procedural justice. Parents feared the potential effect of caucus on the quality of outcomes mediation could procure. For example, parents were concerned that mediators sometimes used the privacy of caucus to try and persuade parents to accept the district's proposal. Parents questioned the mediators' neutrality. A few school officials cited the same complaint, as

they felt the mediator tried to convince them to accept the parents' demands, regardless of what they felt was in the realms of what they could offer under accepted special education policy and procedural law.

However, caucus was not always a hindrance to perceived procedural justice. Both parents and school representatives reacted positively to caucus when mediators listened to each parties' full story. Additionally, caucus received rave reviews when the process led to a mutually agreed upon resolution. It seems that all parties, in pre-mediation interviews, thought mediation would provide a forum in which procedural justice would occur. Based on interviews from both parties, the authors suggest that both before and after mediation occurred, all valued the process primarily for the procedural justice and the resolution provided. School personnel, regardless of the outcome, overwhelmingly felt the process was fair, allowing parents to voice their concerns. Parents sought and appreciated the process that provided them with the opportunity to be heard.

In a study by Nowell and Salem (2007), it was also apparent that parents wanted to have a sense of procedural justice upon entering mediation and wanted to re-establish positive working relationships with school personnel. These researchers conducted semi-structured interviews with 7 parents of students who participated in special education mediation programs and found that for some parents, taking part in mediation improved their relationship with the school. Others, however, reported that their relationship with the school had been negatively affected by the mediation.

Interpersonal relationships. Overwhelmingly, parents who experienced positive conflict resolution described both improved responsiveness and decreased negative interactions from school personnel. Interestingly, only one parent out of seven articulated behaviors exhibited from school personnel that the literature describes as benefitting parent-school relations, which are increased trust, problem solving, and communication (Beyer, 1999; Fritz, 2008; Mueller, Singer, & Draper, 2008). Even though in all cases studied, an agreement was made through mediation, there were a few parents who did not experience an increase in positive interactions from all school personnel. One parent perceived this negative interpersonal relationship as a result from a lack of need to interact since mediation had resolved the problem. Other parents described the relationships as characterized by decreased trust and communication. Adversarial interactions with school personnel also increased for some parents after mediation.

Sense of efficacy. Many parents expressed feeling a sense of efficacy in regard to influencing their child's education. Parents described perceived changes in how the school viewed them as decision makers concerning their child's education. Parents described feeling that school personnel had more respect for them, particularly for their knowledge base of parental rights and the ability to hold the school accountable. However, other parents felt a reduced sense of efficacy when they felt their decision making power regarding their child's education diminished. Parents expressed feelings of hope for positive change dissipate, optimism for the future decrease, and the feeling of powerlessness to promote change in the school. One parent stated that her hope for

positive change dissipated after what was discussed and ultimately accepted in mediation did not transpire. Other parents described a lack of optimism after mediation, stating they doubted things could get better or have any influence over the school's decision without taking them to court. These perceptions reinforced parents' feelings of lack of power and ability to positively effect change.

Parents have not always been the focus of survey data in regard to dispute resolution practices. Sometimes researchers have wanted to focus on what the educators have to say. One such study was conducted by Hazelkorn, Packard, and Douvanis (2008) where 260 special education directors across four states were surveyed utilizing a 15 item questionnaire. This study yielded a 40% return rate. The states included in this study were Georgia, Massachusetts, Washington, and Wisconsin, which represented four distinct geographic regions and four different circuit courts of appeals. One of the research questions asked of participants was, "Were the mediations negotiated compromises, nonadversarial, and voluntary? In addition, were you pleased with the outcome?" In regard to negotiated compromises, 85% of the directors believed mediations were a negotiated compromise between all parties. Additionally, 87% thought the mediation process was voluntary and 88% thought that all parties involved were generally pleased with the outcome derived from mediation; however, 34.6% indicated they perceived mediation as adversarial.

When asked about the effectiveness of mediation, 76% stated mediation allows for a greater discussion of issues and 72% said it was more informal than a due process

hearing. Almost one half (46%) thought their district would use mediation because issues are resolved faster than due process. Less than one half (43%) identified cost as a reason for using mediation. Approximately one third of participants listed the possibility of not using attorneys, along with confidential and binding results, as a reason to use mediation. Only 3.9% stated that mediation would be used because they were unsure of its legal standing. It is important to note that 71% of the districts had attorneys on retainer for special education issues. This is important when assessing answers regarding costs and lawyers present during mediation, as they can be if all parties have them present.

The last study to be examined included observational data and interviews with 18 district personnel, six parents, and seven confirming case professionals from two different school districts, along with the dissecting of their special education documents (Mueller et al., 2008). Special education directors at both districts recommended participants who were considered to have an above average understanding of their district's system-wide problems and changes. Directors were also charged with the task to choose parents who had already experienced conflict with the district. Seven local experts knowledgeable in the field of inquiry (e.g. parental dissatisfaction with special education) were also recruited as "confirming case professionals". Experts were chosen due to their knowledge of the parent-school partnership, parental dissatisfaction with the special education process, conflict prevention, ADR options, and the special education system at large. These seven participants were comprised of three parent advocates, three local education agency representatives, and an ADR officer.

The purpose of the study was to determine the system-wide problems that contributed to parental dissatisfaction and subsequent due process hearing requests in each district, and to identify systemwide changes that helped to prevent conflict and reduce the rate of special education litigation between the parents and school districts. Data analysis revealed three themes within each district was at the core of the problem, including: (a) lack of leadership, (b) not keeping up with the law, and (c) exclusion of parents. Due to the high number of special education due process hearing requests, both school districts, independent of one another, worked to change the aforementioned problem components in order to increase parental satisfaction. The fundamentals of system wide changes were organized into seven themes: (a) new leadership, (b) partnerships, (c) creative use of resources, (d) updated educational practices, (e) relationship building, (f) teacher and parent support, and (g) ADR. For purposes of this manuscript, the focus will attend to the changes made in ADR.

District one utilized three ADR strategies, which included: (a) child-centered practices, (b) team meetings, and (c) negotiation. Participants described these ADR practices as a means to place the child's need at the core of the discussion, for increased group communication and conflict resolution, and increased negotiating by all team members. Interviewees described this process as a proactive stance to address issues in a non-combative manner and without having to use a more formalized process, like mediation or due process, to resolve parental dissatisfaction. District two predominately utilized FIEP meetings as their ADR method. Six participants involved in a recent FIEP

were interviewed by the first author (Mueller). In this case, the IEP had not been signed by the parents in over two years due to disagreements. After two long FIEP meetings, the parents were in agreement and signed the IEP. One of the administrators present in the meeting stated, “I think that a lot of times it’s helpful to have people come in who are just neutral parties who don’t have any history of what’s going on.” Additional comments made by participants in this meeting included that everyone was able to feel ownership by going through this process because everyone had a chance for their voice to be heard and everyone is focused on the task at hand, with the aid of the facilitator(s). It was noted that all FIEP meetings in this district led to the successful signing of an IEP without going to litigation. Both of these districts’ administrators conveyed that it was more cost effective to resolve disputes through ADR rather than litigation.

Discussion

Findings from these studies suggest that all participants, whether it was parents or school personnel, appreciated dispute resolution options as a way to openly communicate with one another. Interview data suggest that procedural justice and progress toward resolution of the conflict through mediation were integral to parents’ and school officials’ appreciation of the process (Welsh, 2004). All parties felt they had the opportunity to speak and be heard in an evenhanded and dignified setting, which was a meaningful improvement over past interactions in IEP meetings. Additionally, both parties saw the process as a way to resolve a pending conflict. Additional findings suggest that although aspects of the interpersonal relationship (e.g. communication, trust) are relevant, parents

are also concerned with the perceived ability to have influence with the school and decisions that are made regarding their child. Results from both Welsh and Nowell and Salem (2007) suggest that parents' want a position of influence in relation to the school as an entity, and specifically when it comes to making choices regarding their child's educational program.

Other findings from these studies suggest that successful mediation did have positive effects, with individuals indicating that two-way communication improved, trust was restored, interpersonal relationships had improved, and a sense of efficacy (specifically for parents) was positive (Mueller et al., 2008; Nowell & Salem, 2007; Welsh, 2004). However, while mediation had the potential to resolve conflicts, it could also create adversarial relationships (or to not improve already adversarial relationships) between parents and school personnel (Nowell & Salem, 2007; Welsh, 2004). While mediation can help alter parent and school personnel relationships toward a more collaborative and true parent-school relationship, it may be insufficient to produce lasting impacts, especially if a resolution during the mediation session is not reached. Parents tended to not favor mediation if a resolution was not made or it was perceived that the agreement made during mediation was not followed (Nowell & Salem, 2007; Schrag & Schrag, 2004; Welsh, 2004). For parents whose expectations were met, an improved relationship with the school was described as one with decreased negative interactions, a greater sense of efficacy (Nowell & Salem, 2007), and a greater sense of trust and desire for positive, two-way communication (Welsh, 2004). A majority of the studies identified

perceived parental dissatisfaction with mediation if there was failure on part of the school to implement the mediation agreement.

While Hazelkorn and colleagues (2008) did not include parents, their findings suggest mediation is being used because parties involved believe the process is voluntary and successful. Mediation is seen as more informal than due process hearings and allows for more open discussion by both parents and school officials, is less time-consuming, and can be less costly. In Schrag and Schrag (2004) results about mediation were not as positive, but this could be attributed to the use of more local, informal ADR options that districts were utilizing, which included FIEP meetings. Other survey and interview data suggested that mediation was perceived as being successful; however, reasons stated centered upon the use of an outside, trained and neutral individual who allowed all parties to air their grievances and tried to move the team toward an amicable resolution to the conflict. Mueller et al. (2008) found that ADR options, including FIEP meetings, were seen as a way to proactively resolve conflict between parents and school personnel, without going through formal IDEA procedures (i.e. mediation). “If districts want to decrease parental dissatisfaction, it seems that this can be achieved most efficiently through their own resolution rather than...using a hearing officer or mediator.” (Mueller et al., 2008, p. 224).

As mediation is considered a formal complaint procedure under the due process route, some researchers in the field have considered it an ADR process because it is voluntary and not as restrictive as a due process hearing. While it is significant that

Congress, beginning in 1997, added mediation for dispute resolution, it is positioned in the dispute resolution framework to be utilized when a due process hearing is being contemplated (Feinburg et al., 2002). Many researchers in the field, in congruence with the way the legislation is written, purport that formal mediation is generally offered too late in the dispute resolution framework and is used as a reactive measure instead of a proactive measure (Feinburg et al., 2002; Mueller, 2009; Mueller & Carranza, 2011). There is a major gap in the special education dispute resolution procedures. The procedures outlined have limitations due to their reactive nature. However, one of the most effective strategies a school or district can utilize is a more proactive plan to try and avoid conflict before it ever reaches any formal hearing level. Some of these practices include creative use of resources, communication, the promotion of trust, teacher and parent support, and the implementation of ADR strategies (Margolis, 1998, Mueller, 2004; Scheffel, Rude, & Bole, 2005). The use of ADR promotes collaboration and has the potential to help participants avoid emotional and financial strains associated with formal dispute resolution practices (Mueller, 2004). Additionally, ADR offers focus, flexibility, and affords parents and school personnel the ability to resolve conflict through their own empowerment.

FIEP meetings use a trained facilitator to assist with the meeting process through objective measures, maintaining order and focus during the meeting (CADRE, 2013). Currently, there are over 20 states utilizing the FIEP process with more states contemplating the implementation of this ADR process (CADRE, 2013). Facilitation is a

relatively new process in the dispute resolution framework. Research on facilitation is in the early stages and this study can help lay the initial research regarding the efficacy of this process in the dispute resolution framework.

CHAPTER THREE

METHOD

The purpose of this chapter is to describe the methods used to conduct the study. First, the research question addressed is stated. Second, characteristics of the setting and participants are discussed, as well as the materials required to conduct the study. Third, the procedures used to conduct the study are described. Finally, descriptions of the data analysis and data authentication are provided.

This study investigated FIEP practices across states by examining (a) FIEP parameters (e.g. years, availability, attorney, participants, funding) of its use; (b) backgrounds, minimum qualifications and trainings required for facilitators; (c) types of data collected and how those data are reported, and (d) FIEP impact on the number of mediations, due process hearings, formal complaints, and resolution sessions held by the states, along with strengths/limitations of holding these meetings.

Setting and Participants

The present study was conducted in a southeastern state that offers government-sponsored FIEP meetings as an alternative option to due process hearings for resolving conflicts between parents and schools. This State partnered with their State's Parent Training and Information Center (PRO-Parents), to develop a Facilitated Individualized Education Program Meeting Pilot Project. The project was piloted during the 2008-2009 school year and was made available to six of the 85 public school districts in the State. Over the next four years, additional school districts were

added to the project. By the 2010-2011 school year, all districts were able to utilize the FIEP process.

However, there are not data available regarding the impact of the FIEP process in regard to decreasing the number of other dispute resolution meetings being held. This information sparked interest in a national survey being conducted to determine (a) if other states were using FIEP meetings, (b) how they were being used, and (c) were they effective. All 50 participants were recruited by accessing the CADRE web-site database of contacts for conflict resolution in their respective state. All participants were directly involved with the FIEP process in their State. Prior to participating in this study, Institutional Review Board (IRB2013-214) approval was obtained from the university. Upon IRB approval, representatives from all 50 states were contacted via telephone and e-mail and asked to complete the electronic survey.

Design and Instrumentation

The research design used for this investigation was a survey design. An electronic format was utilized to collect respondent information. Survey design is efficient, timely, and inexpensive to describe the characteristics of a population. A descriptive survey provides researchers a way to find out how members of a population distribute themselves on one or more variables. However, there are also limitations associated with surveys, including respondents not providing accurate answers or answers that present themselves in an unfavorable manner. Additionally, respondents may not be fully aware of their reasons for any given answer due to lack

of memory, awareness, or boredom (Dillman, 2007). A combination of 28 open- and closed-ended survey entitled “Facilitated IEP State Questionnaire” was developed by the author to investigate the parameters of the meetings, qualifications and background requirements of facilitators, data collection procedures, and other resolution strategies that were employed if the FIEP process did not provide positive results. The questionnaire was divided into 5 sections.

Section one. The first three questions on the survey were for information collection purposes only. Questions one and two asked which state the respondent represented and title held, with question three asking if their state offered FIEP meetings as an alternative dispute strategy. If the respondent answered no, the survey was completed. If yes, the respondent was instructed to continue answering the remaining questions.

Section two. The six closed-ended questions in this section pertained to the actual FIEP meeting. Questions included number of years offered, number of districts involved, are attorneys present, sections of the law that covers the meetings, funding opportunities, and reasons for holding the meetings.

Section three. Seven closed-ended questions based on facilitators’ qualifications and training comprised this section. Information requested included how many and who are the facilitators, what type of qualifications must each have, how are they chosen, what is a typical case load, how are they compensated, and types of professional development offered/mandated.

Section four. Information regarding the type of data tracking system utilized in each state was asked in section four. Five closed-ended questions asked who is responsible for maintaining data, how are districts informed of the FIEP meeting option, types of professional development available, how is feedback obtained, and how are data reported.

Section five. The largest of the five sections, data garnered included information about the 2012-2013 school year and some open-ended questions to gain a deeper understanding of respondent's perceptions. Questions about the number of meetings filed and held, in addition to how many were resolved and/or reduced other dispute resolution options, were asked in a closed-ended format. However, two open-ended questions regarding respondent's perceptions of FIEP meetings provided an opportunity for each participant to provide input not asked earlier. The first question inquired about their perception of the strengths of FIEP meetings, while the second question inquired about the limitations.

Survey questions were reviewed by an expert in the field of survey design. An email request was sent and two separate meetings occurred between the researcher and expert to create the survey (Appendix A). Content of the survey was reviewed by special education experts in facilitation and legal/policy issues. The survey was pilot tested with a small sample of graduate students familiar with ADR and former special educators, in conjunction with teachers and administrators who have been involved in ADR meetings. Participants were asked to review the survey for understanding.

Procedure

According to Dillman (2007), certain factors should be included when conducting an investigation using a survey design to ensure an appropriate response rate. These factors are as follows: (a) respondent-friendly design; (b) prenotice letter; (c) reminder postcard/letter; (d) replacement questionnaire; and (e) real stamp on return envelope. A recommended response rate for a survey design is greater than 50% with careful attention paid to possible response bias. An introductory semi-structured phone call (Appendix B) was made to each state representative to explain that soon they would receive an invitation electronically to participate in the national survey. A total of 37 (74%) state representatives were reached via telephone and all of those contacted were sent an e-mail within a week which contained a brief explanation of the purpose of the survey and an electronic link in how to access the survey (Appendix C). Within one week, 24 surveys were completed and returned. For state representatives who were reached via telephone, sent an e-mail with the link, but did not complete the survey within a week, a reminder e-mail, including the link for the survey, was sent (Appendix D).

At the same time the first e-mail was sent to the 37 state representatives who were initially reached, a second iteration of phone calls were made to state representatives who were not reached during the first iteration. Contact was made with a live person or a voice mail was left requesting their cooperation. Within seven days, the original e-mail was sent (Appendix C), which garnered 12 more completed

surveys, bringing the total to 36. Seven days after the second attempt was made to contact state representatives, a third attempt was made. All remaining 14 state representatives were called and sent the reminder e-mail (Appendix D). Phone contact was made with 6 respondents, with all but one agreeing to take the survey. Voice messages were left with the remaining 8 state personnel. After this third iteration, only 4 state representatives did not complete the survey, with 1 indicating that they would not participate (Nebraska via telephone), 1 state (Nevada) responded by only writing their state name on the survey without providing any additional information, 1 state (New Mexico) indicated that they do offer FIEP meetings, but did not answer any other questions, while another state (Maryland) did not respond to any of the multiple contact attempts (see Table 3.1). Because the survey was being sent electronically and typically to 12 month state employees, no incentive for participating was utilized.

Table 3.1

Timeline For Contacting States

| | |
|--------|--|
| Week 1 | <ul style="list-style-type: none"> • Initial phone call made to all 50 states |
| Week 2 | <ul style="list-style-type: none"> • Initial e-mail sent to 37 states contacted • 2nd phone call made to 13 states |
| Week 3 | <ul style="list-style-type: none"> • Checked for completed surveys • Reminder e-mail sent to 37 states • Initial e-mail sent to 13 states |
| Week 4 | <ul style="list-style-type: none"> • Checked for completed surveys • 3rd phone call made to 14 states who had not completed survey • Reminder e-mail sent to these 14 states |
| Week 5 | <ul style="list-style-type: none"> • Checked for completed surveys |

Data Analysis

For purposes of this study, the response rate was calculated by dividing the number of state representatives who submitted a completed survey (75% of questions answered if conduct FIEP meetings; answered questions 1 – 3 if do not conduct FIEP meetings) by the number of total states in the union.

As is common in survey research (Dillman, 2007), tables were generated and displayed to describe the closed-ended questions asked of each participant. To analyze answers generated from the open-ended questions, qualitative analyses were conducted to better understand perceptions regarding the FIEP process. Strauss and Corbin's (1997) method of constant comparative data analysis (also known as Grounded Theory) was employed to analyze theories and themes that emerged from the shared experiences of the participants. There are four stages of analysis in constant comparative data analysis (Creswell, 2007). First, codes are identified that allow key points of the data to be gathered. Then, collections of codes of similar content are grouped into concepts. Next, similar concepts are placed into broad groups called categories. Finally, theories are developed from the categories as a collection of explanations regarding the study. For this study, answers from the two open-ended questions (questions 27 and 28) were read in completion. Answers garnered from both open-ended questions were read by both the primary researcher and another researcher involved with the study. After initial coding was complete, the concepts were developed and any discrepancies were discussed. Categories were established

from the concepts, depicting the strengths and limitations perceived by respondents.

Interrater agreement was 95% for perceived strengths and 92% for limitations.

In summary, a survey was developed by the author to examine the FIEP meetings, and determine what, if any, data are being collected to determine the effectiveness of these meetings across the 50 states. The survey was examined by an expert in the field and the questions were assessed by two experts in the area of facilitation and legal/policy issues. The survey was reviewed for understanding by a small sample of graduate students familiar with ADR, along with teachers and administrators previously involved in dispute resolution. Dissemination of the survey occurred at the national level to representatives from all 50 states that had direct knowledge of ADR processes. Descriptive statistics, with additional qualitative analysis, were used to answer the research question. Results of the data analysis are summarized in the following chapter.

CHAPTER FOUR

RESULTS

The purpose of this study was to examine if states utilize FIEP meetings and if so, determine what data were collected regarding the use and effectiveness of such ADR meetings. All 50 states were contacted via telephone and e-mail, with the latter including a link for the 28 question survey powered by Survey Monkey.

After University Institutional Review Board approval, the process of contacting states began during the spring 2014. Over the course of 4 weeks, 3 rounds of phone calls were placed, in addition to initial and reminder e-mails, to all 50 state representatives identified as ADR contacts via CADRE's website. The initial contact resulted in 24 surveys being submitted. The second contact resulted in 12 additional completed surveys, bringing the total submitted to 36. The third contact yielded 10 more completed surveys, with only 4 states electing not to participate.

The purpose of this chapter is to present the results of the research question that guided this investigation. Findings are provided in three sections including: (a) the results of all data analyses used to answer the research question, (b) a summary of the themes generated from the open-ended survey questions, and (c) an overall summary of the results.

Data Analyses

Identifying information. A total of 46 state representatives completed the survey, which yielded a response rate of 92%. The title of the state representatives who completed the

survey varied, with the most common represented title (11) containing the phrase dispute resolution (e.g. Dispute Resolution Coordinator, Director of Dispute Resolution, Consultant for Dispute Resolution, Dispute Resolution Administrator). Other representatives included attorneys, lawyers, mediation coordinators, education consultants, or directors.

Twenty-eight states indicated they offer FIEP meetings as an ADR strategy. While New Mexico did state they offer FIEP meetings, they did not complete any other portion of the survey, so their responses did not count. In essence, data reported for this survey will only include the 27 states who completed the survey (n=27). Out of the 18 that stated on the survey they do not offer FIEP meetings, 17 indicated that they do offer other types of ADR strategies. Mediation is used in all 17 states, with 8 of these states providing mediation in conjunction with other ADR strategies, including parent liaisons, parent-to-parent assistance, call center personnel, case manager, and ombudsman. Additionally, states not offering FIEP meetings were offered a comment box on the survey to inform the researchers of anything pertinent regarding their states ADR process. While only 6 state representatives elaborated on this, some of the comments were of particular interest. For instance, both Arizona and Illinois indicated that their state is currently in the process of developing a FIEP program. The representative from Oregon indicated that while their SEA does not support FIEP meetings, school districts are able to support them in association with high level disputes. According to the Indiana respondent, a FIEP meeting process was initiated many years ago, but it was not viable

and thus there truly is not a process in place. The remainder of the questions and answers discussed only pertain to the 27 states that completed the questionnaire and currently offer FIEP meetings.

FIEP meetings. This section of the survey targeted specific policies and procedures affiliated with FIEP meetings in general. Respondents were asked to indicate the (a) number of years these meetings have been offered, (b) number of districts in their state who have the ability to hold them, the presence of attorneys, (c) section of the law that covers the meetings, funding opportunities, and (d) reasons for holding the meetings. Table 4.1 outlines state responses pertaining to FIEP meetings and number of years offered, number of districts who hold meetings, the presence of attorneys, sections of the law, and funding sources.

Time implemented. The mean for FIEP meetings being offered is 9 – 11 years, with 7 states reporting this time frame, which is around the time IDEA 2004 mandated ADR strategies to be offered. However, several states (IA, MI, MN, MS) have offered FIEP meetings for more than 12 years, which was prior to the passage of IDEA 2004. Five states (AR, CT, FL, TX, & WV) just recently began offering FIEP meetings within the past 2 years. In regard to whether or not all districts in the state have the opportunity to offer FIEP meetings, Arkansas offers them to some districts, while Florida offers them to most. The remaining 25 states offer FIEP meetings to all districts.

Law. Attorneys are allowed to participate in all but Hawaii; an additional 4 states did not know (FL, OK, SD, & WV). Part B of IDEA is utilized in all states who

Table 4.1

FIEP Meeting Information

| State | Years Offered | Districts Offered | Attorneys Present | Sections of Law | Funding Sources |
|-------|---------------|-------------------|-------------------|----------------------------------|-------------------|
| AR | 0-2 | Some | Yes | Parts B & C, IDEA | Grant |
| CT | 0-2 | All | Yes | Part B of IDEA | Local |
| FL | 0-2 | Most | NR | Part B of IDEA | Local, State |
| TX | 0-2 | All | Yes | Part B of IDEA | General revenue |
| WV | 0-2 | All | NR | Part B of IDEA | Local, State |
| MT | 3-5 | All | Yes | Part B of IDEA | State |
| NH | 3-5 | All | Yes | Part B of IDEA | State |
| OK | 3-5 | All | NR | Parts B & C, IDEA | State |
| SD | 3-5 | All | NR | NR | State |
| WA | 3-5 | All | Yes | Part B of IDEA | State |
| LA | 6-8 | All | Yes | Part B of IDEA | State |
| MA | 6-8 | All | Yes | Parts B & C, IDEA Section 504 | Federal |
| OH | 6-8 | All | Yes | Part B of IDEA | Federal money |
| SC | 6-8 | All | Yes | Part B of IDEA | State |
| AK | 9-11 | All | Yes | Parts B & C, IDEA | Grant |
| DE | 9-11 | All | Yes | Parts B & C, IDEA Section 504 | State |
| ID | 9-11 | All | Yes | Parts B & C, IDEA | IDEA Part B |
| NC | 9-11 | All | Yes | Part B of IDEA | State |
| PA | 9-11 | All | Yes | Parts B & C, IDEA Section 504 | Local, IDEA funds |
| UT | 9-11 | All | Yes | Part B of IDEA | State |
| WI | 9-11 | All | Yes | Part B of IDEA | Grant, IDEA grant |
| IA | + 12 | All | Yes | Parts B & C, IDEA | State, Federal |
| MI | + 12 | All | Yes | Parts B & C, IDEA | State, Grant |
| MS | + 12 | All | Yes | Part B of IDEA | State |
| MN | + 12 | All | Yes | NR | Grant, IDEA funds |
| HI | NR | All | No | Part B of IDEA | State |
| ND | NR | All | Yes | Part B of IDEA | State |

* NR = Not Reported. State indicated they did not know.

indicated they offer this ADR strategy, except for in 2 states; both Minnesota and South Dakota did not know. Nevertheless, Part B is not the only section of the law states utilize. For example, some states can also hold meetings under Part C of IDEA and Section 504.

Funds. In regard to funding, 13 state representatives indicated that state funds are the sole funding source for conducting FIEP meetings. Furthermore, local funds solely support FIEP meetings in Connecticut while Alaska and Arkansas utilize grant monies. Likewise, federal monies exclusively fund FIEP meetings in Idaho, Massachusetts, and Ohio. Other states use a combination of funding sources.

Areas of dispute. When trying to ascertain information regarding the use of ADR, specifically FIEP meetings, it is important to determine what areas of contention may arise between parents and schools. One question in this section did just that. State representatives were asked, from a pre-determined list, to check how often each issue was the underlying cause for dispute resolution in their state. Options included (a) very common reason, (b) common reason, (c) limited number, (d) never, or (e) don't know.

The three most common reasons for FIEPs are related to IEP implementation (19 states), discipline/behavioral issues (11 states), and placement of students with disabilities (10 states). IEP implementation refers to providing the program and services outlined on the student's IEP as outlined and agreed upon by the IEP team. Discipline and behavioral issues are any action performed by the student that constitutes a reprimand, while placement issues refer to the setting in which the student will receive special education

services. Issues that were reported only once as a very common reason for dispute resolution included progress reporting (Michigan) and assistive technology (Minnesota). Common issues for parents and schools to enter dispute resolution are accommodations/modifications (16 states), goals/objectives (14 states), support services (14 states), and related services (15 states). Inversely, less common issues for entering dispute resolution included related services (15 states), transition (12 states), progress reporting (11 states) and present levels of performance (11 states). There were 5 states that added their own issues that have caused parents and schools to enter into dispute resolution. Wisconsin ranked all 12 pre-selected issues as either common or very common and then added, “communication breakdown, help building an agenda, keeping the focus on the student, managing time, maintaining forward movement, providing an opportunity for everyone to speak, safety, and personnel issues.” On a similar note, Idaho ranked all 12 pre-selected items, but added, “Hearing resolution sessions and discipline-manifestation determination meetings.” Delaware added to the list “lack of communication and trust issues”, while New Hampshire stated “extended school year services”, and Iowa, “identification/Child Find is our most frequent concern.” Table 4.2 depicts the 12 different pre-selected issues and the number of states indicating the level at which they resulted in dispute resolution.

Facilitator qualifications and training. The questions in section three focused on required facilitator qualifications and training. Specifically, questions asked (a) who serves as facilitators, (b) how are they chosen to conduct meetings, (c) how many are

Table 4.2

Common Reasons for Requesting Dispute Resolution

| Reasons | Very Common | Common | Limited Number | Never |
|-------------------------------|-------------|--------|----------------|-------|
| IEP Implementation | 19 | 4 | 2 | 1 |
| Discipline/Behavior | 11 | 9 | 5 | 0 |
| Placement | 10 | 9 | 5 | 1 |
| Accommodations/Modifications | 7 | 16 | 3 | 1 |
| Identification/Evaluation | 6 | 10 | 7 | 2 |
| Related Services | 6 | 15 | 4 | 1 |
| Support Services | 6 | 14 | 6 | 0 |
| Transition | 3 | 10 | 12 | 1 |
| Goals/Objectives | 2 | 14 | 9 | 1 |
| Present Levels of Performance | 2 | 6 | 11 | 6 |
| Assistive Technology | 1 | 8 | 15 | 1 |
| Progress Reporting | 1 | 9 | 11 | 4 |

utilized and what kind of caseload do they carry, (d) how are they compensated, and (e) what type of professional development do they undertake to become a facilitator?

Facilitators. Mediators are most commonly used as facilitators, according to feedback garnered from the questionnaire. Of the state representatives who responded, 17 indicated they use mediators. Of the 17 states, 10 reported they solely use mediators, whereas the other 7 states use mediators in conjunction with other personnel. Three states do not use mediators at all (NC, ND, & NH). North Dakota only uses personnel in higher education, while New Hampshire only utilizes trained volunteers (parents, educators, higher education personnel, etc.). North Carolina contracts with individuals who have mediation and special education skill sets.

Qualifications. While it is important to know who usually conducts FIEP meetings, it is also beneficial to understand what type of qualifications are required to serve as a facilitator. An overwhelming majority of state representatives (22) indicated that facilitators are required to have state training, 14 of which only require state training, while the remaining 8 require state training coupled with additional requirements. For example, both Alaska and Wisconsin require an advanced degree in tandem with state training,

While 3 states did not reply to this question, there were only 2 states who did not indicate they utilized any type of state training (CT, ND). Given Connecticut employs merely 6 independent contractors to conduct FIEP meetings, they are only required to attend a CADRE training, while North Dakota requires their facilitators to hold a master's degree in special education. Table 4.3 depicts the different titles utilized and qualifications required of facilitators, by state.

Training requirements. While most states have specific qualifications for facilitators, many also have specific training they require facilitators to undergo. Twelve states mandate an all-day training for facilitators, which consists of various types of professional development, dependent upon state requirements. An additional 11 states mandate all day trainings in tandem with in-services and other types of training. Many states review techniques to diffuse situations, while other states focus on recent case law. Four states reported additional professional development requirements (ID, TX, WA & WI). For instance, Wisconsin has an annual mandatory one-day required training plus

Table 4.3

Facilitator Titles and Required Qualifications

| States | Titles | Qualifications |
|--------|--|--|
| MA | Mediators | NR |
| WV | Mediators | NR |
| AK | Mediators | Master's in special ed., State trng |
| AR | Mediators | State trng |
| OK | Mediators | State trng |
| MI | Mediators | State trng |
| WI | Mediators | State trng; Advanced degree |
| PA | Mediators | State trng; Experience |
| DE | Mediators | State trng; Know law |
| MN | Mediators | State trng; Mediator |
| IA | Mediators, Special Educators | State trng |
| MS | Mediators, Special Educators, Attorneys | State trng |
| SC | Mediators, Special Educators, Higher Ed., Leaders of Family & Community Organizations | State trng |
| UT | Mediators, Attorneys | NR |
| OH | Mediators, Attorneys and Social Workers | State trng; Professional |
| ID | Mediators, Retired Professionals (administrators, special ed. directors, service providers, community members) | State trng |
| WA | Mediators, Members of State Special Education Mediator Cadre | State trng; Professional |
| HI | Special Educators, Administrators | State trng |
| MT | Special Educators, School Psychologists | State trng |
| LA | Special Educators, Administrators | State trng |
| TX | Special Educators, Attorneys, Administrators, Private Consultants | State trng; Knowledge, experience in conflict/SPED |
| CT | Attorneys, Educators, Former State Employees | CADRE training |
| ND | Higher Ed. | Master's in special ed. |
| NH | Trained Volunteers (parents, educators, higher ed.) | State trng |
| NC | Contracted individuals with mediation/special education skill sets | State trng |
| FL | State Level: Mediators. District Level: Special Education Staff & Admin. | State trng |
| SD | NR | State training |

an optional half day training with technical assistance available year round to those who request services. Idaho sends some to the Pacific SPED Law Conference and provides access to CADRE webinars for all their facilitators. Additionally, facilitators attend “lunch and learn” trainings yearly. Connecticut, who has just recently begun offering FIEP meetings, indicated that future trainings will be held, but the content of these sessions has not been specifically determined yet. Massachusetts does not currently mandate any type of training, or professional development.

Case loads and number employed. The number of facilitators employed and their respective case loads varied from state to state. The mean case load for facilitators is between 1-5 per year, with 19 states choosing that option, while the mean number of facilitators for states to employ is between 1–5. The range for both case load and number employed was 1 – 26 or more. However, there are always exceptions and deviations. For instance, both Delaware and Massachusetts employ 1–5 facilitators who have a yearly case load of 26 or more cases per year. Conversely, 4 states (IA, MI, PA, & WI) employ 21 or more facilitators with each having a case load of 1-5.

Compensation. With some facilitators having heavy case loads, it is meaningful to know how they are compensated for running the FIEP meetings. The range for facilitator compensation turned out to be \$0 - \$750. Three states (NH, MI, & HI) utilize volunteers, which means they do not compensate their facilitators. Massachusetts utilizes state employees/mediators who are already full time employees on the clock, so they cannot get paid additional monies for facilitation. On the contrary, 4 states pay over \$500

dollars with Texas indicating that in late 2014, they look to pay a flat rate of \$750 per meeting. Some states pay hourly and indicated they also pay travel expenses (IA, ID, MN, & OH).

Geographical assignment. The most applied criterion used to determine which facilitator is assigned a particular meeting is geographical considerations. Almost half (14 states) indicated that this is the determining factor used for assignment. However, some states just randomly assign facilitators, while others ask the involved parties to choose (CT & WI). Table 4.4 contains information regarding compensation for facilitating meetings and how those meetings are assigned.

FIEP meeting data. This section pertained to tracking and reporting FIEP meeting data. Information garnered included tracking of meetings, how districts are informed of the option, professional development available to districts, feedback obtained, and the way data are reported for FIEP meetings.

Tracking. State department personnel are solely responsible for tracking FIEP meetings in 15 states. An additional 7 states (WV, FL, IA, MA, WI, MI, & PA) utilize state department personnel in conjunction with other individuals. Two states (DE & AR) both contract with higher education institutions, while Oklahoma is the only state who utilizes school district personnel.

Reporting. While it is important to know how data are tracked, it is also important to understand how the data are reported. Out of the 27 states who offer FIEP meetings, 9 do not report their data (AK, MS, MT, CT, SD, FL, IA, AR, & HI).

Table 4.4

Assignment of and Compensation for Facilitators

| States | Assignment Determined by | Compensation |
|--------|-------------------------------|---|
| PA | Geography | \$251-\$500 |
| LA | Geography | \$251-\$500 |
| WA | Geography | \$600/half-day + expenses |
| SD | Geography | 0-\$250 |
| OK | Geography | NR |
| SC | Geography | Over \$500 |
| NC | Geography | Over \$500 |
| NH | Geography | Volunteer |
| ND | Geography | NR |
| MT | Geography | \$25/hour |
| MI | Geography | Volunteer |
| HI | Geography | Volunteer |
| FL | Geography (state level) | Hourly rate/varies |
| CT | Districts, parents choose | Over \$500 |
| WI | Parties agree from list | \$150/hour, 3 hour max (prep and meeting time) |
| MS | Random | \$251-\$500 |
| DE | Random | \$251-500 |
| IA | Random | \$80 plus expenses |
| UT | Random | 0-\$250 |
| AK | Random | 0-\$250 |
| AR | Random | Don't know |
| MA | Random | Full time employees |
| MN | Random within geographic area | No more than \$100/hour per case, \$50/hour travel |
| WV | Rotate | 0-\$250 |
| TX | Rotate | Over \$500 |
| ID | Rotate | \$65/hour case work, \$35 travel, all travel expenses |
| OH | Select from list (geography) | \$150/hour (meetings & administrative time) |

* NR = Not Reported. State indicated they did not know.

Connecticut, who has held FIEP meetings for less than 2 years, explained they intend to report data in the future as the program grows. Additionally, two states (UT & ID) maintain the data internally, only reporting to stakeholders. Five states (NH, SC, LA, MA, & DE) indicated they maintain data in the child's special education file. Other states (MN, NC, & WI) report data on their respective state web-sites.

Option for FIEP meeting. The question concerning how states let districts know of the FIEP option resulted in varied responses. Two states (FL, MT) utilize state department personnel as their one communication tool to inform districts of the option to use FIEP meetings. All other states indicated that multiple sources are used, with the most common being website and state department personnel (24 states). The other state that does not use a web-site to promote FIEP meetings is Hawaii, which uses in-services and state department personnel. Three states (MA, SD, & TX) use other means of communication besides state department personnel. Table 4.5 outlines each state's communication tools for informing districts of the availability of FIEP meetings.

Professional development and feedback. The last 2 questions discussed in this section pertain to the type of professional development provided to districts and feedback garnered from FIEP meetings. This section specifically addressed how school districts are trained to use and be involved in the FIEP meeting process. Table 4.6 depicts professional development opportunities and the way feedback is obtained by states for FIEP meetings. Many combinations of professional development avenues were chosen by the 23 participants who responded, with 17

Table 4.5

Options Used To Inform Stakeholders of FIEP Meetings

| States | In services | Web site | State Department Personnel | School District Personnel | Other |
|--------|-------------|----------|----------------------------|---------------------------|---|
| AR | * | * | * | * | |
| IA | * | * | * | * | |
| NH | * | * | * | * | |
| AK | * | * | * | * | |
| PA | * | * | * | * | |
| MS | * | * | * | * | |
| WA | * | * | * | * | |
| ID | * | * | * | * | |
| OK | * | * | * | | |
| WV | * | * | * | | |
| SC | * | * | * | | |
| NC | * | * | * | | |
| HI | * | | * | | |
| FL | | | * | | |
| MT | | | * | | |
| OH | * | * | * | * | Advocates & Attorneys |
| UT | * | * | * | * | Parent Information & Training Center |
| MI | * | * | * | * | School District Presentations |
| DE | * | * | * | * | Bilingual Brochure |
| SD | | * | | | Listserv |
| TX | | * | | | Listserv, Conferences, Workshops |
| MA | | * | | * | Word of Mouth |
| ND | | * | * | | |
| CT | | * | * | | Annual Special Education Directors' Meeting |
| MN | | * | * | | Conferences, Presentations at Directors' Forums |
| WI | | * | * | * | Outreach presentations, Stakeholder Council |
| LA | | * | * | | State Safeguard Bulletin |

Table 4.6

Professional Development and Feedback for FIEP Meetings

| States | Professional Development For Districts | Feedback from FIEP Meetings |
|--------|--|--|
| AR | Face training by state | Surveys |
| IA | Face training by state, Face training by consultant | Surveys |
| WI | Web-based, Face training by consultant, phone presentations | Surveys |
| NH | NR | Surveys |
| WV | Face training by state | Surveys |
| AK | Web-based, Face training by consultant | Surveys |
| ND | Face training by state | Surveys |
| MI | Face training by consultant | Surveys |
| PA | This is in progress | Surveys |
| MN | Question & Answer document | Surveys |
| WA | Face training by consultant | Surveys |
| DE | Face training by consultant | Surveys |
| ID | This is in progress | Surveys |
| CT | This is in progress | Surveys |
| NC | Face training by consultant | Surveys |
| TX | Web-based, Face training by Education Service Centers | Surveys, Facilitators responsible for feedback after meeting |
| OH | Over phone or e-mail | Surveys, Follow-up if a concern |
| OK | Web-based, Face training by state, Face training by consultant | Follow-up phone calls |
| SC | Face training by consultant | Follow-up phone calls |
| LA | NR | Follow-up phone calls, facilitator reports |
| UT | Face training by state | Being redesigned |
| FL | Face training by consultant | In progress |
| MT | Face training by state | In progress |
| MA | NR | None |
| MS | Face training by state | None |
| HI | NR | None |
| SD | Face training by consultant | None |

* NR = Not Reported. State indicated they did not know.

participants indicating they use some form of face-to-face training, whether it be face-to-face by state department personnel (AR, ND, WV, UT, MT, & MS) or face-to-face by a consultant (MI, WA, DE, NC, SC, FL, SD, WI, AK, IA, & OK). There were three states (PA, ID, & CT) that indicated they were in the process of providing this type of development, but were not there yet. Both Pennsylvania and Idaho have used FIEP meetings for 9 – 11 years, while Connecticut has implemented these meetings for less than 2 years.

Not all states offer professional development. Additionally, not all states obtain feedback after FIEP meetings are held. Four states (MA, MS, HI, & SD) reported they do not obtain data from meetings. All of these states, with the exception of Hawaii who did not indicate how long FIEP meetings have been utilized, have implemented FIEP meetings for at least 3 or more years, with Mississippi offering them for 12 or more years. However, there are a number of states who do seek feedback regarding FIEP meetings, with the most common method utilized being survey data (17 states). Currently, there are 3 states (UT, FL, & MT) who are either redesigning or are in the process of implementing a feedback process.

School year data. In section 5, questions were asked that were specific to the 2012-2013 school year. Information was requested regarding the number of cases filed and held, in addition to who initiated the meetings, whether FIEP meetings reduced other conflict resolution processes, and perceived strengths and limitations of this FIEP meetings.

Meetings filed. The mean for number of meetings filed is 26 or more, with 10 states (DE, WA, MN, MA, IA, OH, MI, PA, ID, & NC) reporting that number of FIEP meetings filed during the 2012-2013 school year, with six states (OK, NH, AK, LA, MT, & HI) indicating 6 -10 meetings being filed. One might think the 4 states (AR, MS, SC, & TX) that did not report data for this question were states in the beginning stages of the FIEP meeting process. However, only Texas and Arkansas reported having 2 or less years invested in the process. South Carolina and Mississippi both have 6 or more years of FIEP meeting experience.

Meetings held. Just because a FIEP meeting was requested and filed does not mean that the meeting was actually conducted. However, the mean for number of meetings held in 2012-2013 is 26 or more (MA, IA, OH, MI, PA, ID, & NC) and 6 – 10 (DE, CT, OK, NH, AK, LA, & MT). In 5 states (CT, WI, DE, WA, & MN), fewer meetings were held than were filed during the 2012-2013 school year. Nevertheless, most states (17) indicated that the number of meetings filed were the number of meetings held. Table 4.7 displays the number of meetings filed and held, by state, for the 2012-2013 school year.

Unresolved meetings. When asked how many FIEP meetings ended with unresolved issues and moved to resolution sessions, mediation, due process, or other formal complaint procedures, the predominant answer provided was don't know (or question marks placed beside each of the above choices). The mean, with data from only 8 states, is 4.5 and a range of 1 – 19 (IA with 19). Only 8 states supplied numerical data

Table 4.7

FIEP Meetings Filed and Held 2012-2013

| States | Number of Meetings Filed | Number of Meetings Held |
|--------|--------------------------|-------------------------|
| WV | 1-5 | 1-5 |
| ND | 1-5 | 1-5 |
| SD | 1-5 | 1-5 |
| OK | 6-10 | 6-10 |
| NH | 6-10 | 6-10 |
| AK | 6-10 | 6-10 |
| LA | 6-10 | 6-10 |
| MT | 6-10 | 6-10 |
| HI | 6-10 | NR |
| CT | 11-15 | 6-10 |
| UT | 11-15 | 11-15 |
| WI | 16-20 | 11-15 |
| FL | 16-20 | 16-20 |
| DE | 26 or more | 6-10 |
| WA | 26 or more | 16-20 |
| MN | 26 or more | 21-25 |
| MA | 26 or more | 26 or more |
| IA | 26 or more | 26 or more |
| OH | 26 or more | 26 or more |
| MI | 26 or more | 26 or more |
| PA | 26 or more | 26 or more |
| ID | 26 or more | 26 or more |
| NC | 26 or more | 26 or more |

for this question with 2 states (WV & PA) indicating that they had to utilize due process hearings when a FIEP meeting/meetings did not get resolved, while 4 states (MI, PA, MN, & DE) used mediation. Table 4.8 displays the 8 states who provided numerical data regarding the number of FIEP meetings that had to be resolved through other dispute resolution strategies.

Table 4.8

Number of FIEP Meetings That Ended in Other Types of Dispute Resolution 2012-2013

| States | Number of FIEP Meetings Ending in Other Types of Dispute Resolution |
|--------|---|
| IA | 2 Resolution Sessions, 10 Mediation, 2 Due Process, 5 Other |
| WV | 1 Due Process |
| AK | 1 Other |
| MI | 2 Mediation |
| PA | 4 Mediation, 4 Due Process |
| MN | 2 Mediation |
| DE | 1 Mediation, 1 Other |
| MT | 1 Other |

Meetings initiated. Survey results showed parents were the ones most likely to request an FIEP meeting. More than half (14) of the state representatives indicated that parents requested the meetings more often than other individuals. However, one state (WV) had 100% of their meetings in 2012-2013 initiated by school level personnel. In 3 states (MA, AK, & NH), district level personnel initiated meetings more often. Table 4.9 outlines who initiated FIEP meetings during the 2012-2013 school year, by state.

Other dispute resolution. When asked if FIEP meetings have reduced the number of other dispute resolution strategies, 9 states (OK, WV, UT, ND, MI, PA, DE, NC, & SD) answered yes. While Florida stated that mediation has declined, they could not directly attribute the decrease to FIEP meetings. In regard to other dispute resolution, Florida stated no.

Nevertheless, Florida has only held FIEP meetings for 2 or less years. Other states (OH & MT) stated that resolution sessions did not decrease, while Ohio further

Table 4.9

FIEP Meetings Initiated 2012-2013

| States | Parents | School Level Personnel | District Level Personnel | Other |
|--------|---------|------------------------|--------------------------|-----------------------|
| WV | | 100% | | |
| MA | 30% | 10% | 60% | |
| AK | 30% | 20% | 50% | |
| NH | 43% | | 57% | |
| OH | 50% | 50% | | Attorneys & Advocates |
| UT | 50% | | 50% | |
| CT | 50% | | 50% | |
| WI | 55% | | 45% | |
| MI | 55% | 23% | 15% | 7% |
| NC | 55% | | 45% | |
| PA | 60% | 40% | | |
| ID | 60% | | 40% | |
| MN | 63% | | 47% | |
| SD | 67% | | 33% | |
| ND | 75% | | 25% | |
| MT | 75% | | 25% | |
| LA | 75% | | 25% | |
| DE | 88% | | 9% | 3% |
| IO | 95% | 5% | | |
| OK | 100% | | | |
| HI | 100% | | | |

stated that facilitation can morph into mediation (and vice versa). Only 2 states (CT & LA) stated that FIEP meetings have not reduced the number of other dispute resolution strategies across the board. Ohio and Louisiana have offered FIEP meetings for 6-8 years, Montana for 3-5, and Connecticut for 0-2.

The last questions in this section pertained to the strengths and limitations perceived by state personnel in regard to the use of FIEP meetings. This information was

important to ascertain because the use of these meetings can be based on the perceptions of their effectiveness of the stakeholders directly involved for offering and utilizing these meetings.

Strengths and limitations. The last two questions were examined through qualitative analysis. The questions asked respondents, based on their experiences, to list the strengths and limitations of FIEP meetings, respectively. Multiple concepts emerged through the collection of codes. Perceptions about the strengths of FIEP meetings yielded 9 concepts, while perceived limitations yielded 8.

Strengths. The primary researcher, in tandem with a second researcher, read each comment provided by respondents for perceived strengths of FIEP meetings. Each comment was considered a significant element of being supportive of FIEP meetings and given a summarizing concept. New concepts were developed as necessary as new ideas emerged. Concepts were then examined and discrepancies were discussed amongst the researchers. Interrater agreement was 95%. The researchers examined the codes and identified 5 broad categories

Improving relationships, fostering of cooperation, and collaboration were merged together into the category collaboration, while improved was taken off of communication because not everyone said communication was improved; some said it was more open. Additionally, positive feedback, satisfaction with resolution process, and allows for resolution were combined into successful agreements. Supportive environment morphed into supportive (because people can be supportive, not just the

environment), and pre-emptive approaches became proactive because pre-emptive suggests that something is done to prevent something; however, proactive implies some kind of action intended to provoke a reaction, or some kind of initiating action. In the examples provided, it seemed that FIEP meetings were intended to provoke a positive reaction and initiate open communication, so proactive is more appropriate.

The five categories that materialized were communication, collaboration, supportive, successful agreements, and proactive. As this was open response, some answers were lengthy and contained phrases that were coded into multiple categories. Table 4.10 provides a list of the concepts and categories from respondents in regard to perceived strengths of FIEP meetings.

Communication. For communication, 9 representatives (AK, MA, FL, WI, TX, OH, WA, DE & UT) indicated that improving upon this between parties was a benefit of FIEP meetings. Comments such as, "...increased positive behavior leading to better ongoing relationships between districts and parents." and "...fostering communication before further breakdown." framed the communication category.

Collaboration. Comments collectively under collaboration were cited by 7 representatives (AK, MA, IA, NH, OH, ID, & CT), with the most common strength being improved relationships between parents and district/school. Examples of other comments that were grouped together under this category were, "...parties reach an agreement together.", "...full participation by all.", and "... help parties work together."

Table 4.10

Concepts and Categories of Perceived Strengths of FIEP Meetings

| Concepts | | Categories |
|---|-----------------------|-----------------------|
| Improving Relationships Fostering Cooperation Collaboration | 7 comments —————→ | Collaboration |
| Positive Feedback Satisfaction with Resolution Process Allows for Resolution | 9 comments —————→ | Successful Agreements |
| Improved Communication | 9 comments —————→ | Communication |
| Pre-emptive Approaches | 4 comments —————→ | Proactive Approaches |
| Supportive Environment | 10 comments —————→ | Supportive |

Supportive. There were 9 representatives (FL, WI, NH, WV, MN, HI, LA, NC, & SD) who used statements that emphasized the supportive nature of FIEP meetings, such as “...help team members prepare for the meeting” and “...re-assessment of issues through third party. Increase safety for team members to discuss issues openly.” Other comments that were coded for this category included “...structure provided is helpful.”, and “...help believe process is fair and inclusive.”

Successful agreements. Successful agreements was indicated by 10 respondents, with comments like, “95% to 98% of participants are satisfied with the process, would participate in it again and would recommend it to others” and “Have

had positive feedback (informal) from participants that they felt satisfied with the resolution.” All the comments in this category alluded to the perceived satisfaction of all participants, with one comment being made that it allows for resolution at the lowest level of ADR possible.

Proactive. The last category discussed is proactive, with 4 respondents (ID, MA, MI, & PA) using terminology that was coded for this category. All comments used terminology such as early resolution, heading off conflict at an early stage, and it is a proactive approach to dispute resolution.

Limitations. The primary researcher, in tandem with a second researcher, read each comment provided by respondents for perceived limitations of FIEP meetings. Each comment was considered a significant element of being a limitation of FIEP meetings and given a summarizing concept. New concepts were developed as necessary as new ideas emerged. Concepts were then examined and discrepancies were discussed, with interrater agreement at 92%. The researchers examined the codes and identified 4 broad categories

The concepts that emerged for perceived limitations were appropriateness of meetings, effectiveness of meetings, facilitator training, facilitator availability, time, hesitation, teamwork, and collaboration. Appropriateness of meetings and effectiveness of meetings, along with hesitation were grouped together. All three of these concepts collapsed into a category called appropriateness/effectiveness because they all tied back to the process of the FIEP meeting itself. The two comments that

were originally coded as hesitation were “Fact that schools are leery of using this option when it could be helpful.” and “Some districts are hesitant to take advantage of the system.” Both of these could be based on lack of perceived appropriateness or effectiveness of the meeting process in and of itself. Facilitator training and facilitator availability collapsed into facilitator issues, while teamwork and collaboration were merged together to form teamwork/collaboration. The 4 categories became appropriateness/effectiveness, facilitator issues, time constraints, and teamwork/collaboration. Table 4.11 displays a list of the concepts and categories derived from respondents’ answers in regard to perceived limitations of FIEP meetings.

Table 4.11

Concepts and Categories of Perceived Limitations of FIEP Meetings

| Concepts | | Categories |
|--|----------------------|-------------------------------|
| Appropriateness of Meetings Effectiveness of Meetings Hesitation | 7 comments —————→ | Appropriateness/Effectiveness |
| Facilitator Training Facilitator Availability | 7 comments —————→ | Facilitator Issues |
| Teamwork Collaboration | 7 comments —————→ | Teamwork/Collaboration |
| Time | 4 comments —————→ | Time Constraints |

Appropriateness/Effectiveness. Under the category appropriateness/effectiveness, 7 different respondents (AK, CT, IA, FL, WI, NH, & OH) listed items that related to perceptions of the appropriateness and/or effectiveness of FIEP meetings. One respondent indicated that, “It is not a ‘magic bullet’... at the end of the day, due process or other complaints continue to be filed.” Another one wrote, “Almost all the requests are not early intervention cases when FIEP meetings can be most helpful and the disputes are full blown and would be better served in mediation.”

Facilitator issues. Comments such as, “In terms of the professionals and maintaining a cadre of individuals that are well trained - it is a skill set that must be practiced and honed over time.” was a comment that helped define the facilitator issues category. There were 7 different comments made for this category by 7 state representatives (FL, NH, TX, OH, ND, DE, & LA). Comments focused on inadequate training, availability of facilitators, and the perceived notion that the facilitator is in favor of or working for the district.

Time constraints. Under the time constraints category, 4 different respondents (MI, MN, NH, & WI) made comments related to time, including not enough of it or waiting too long to access the service. Most of these states indicated that their meetings have time limits, and this can impede a decision being made that is agreeable to all parties.

Teamwork/Collaboration. The last category, teamwork/collaboration, is comprised of comments from 7 different respondents (NH, TX, ND, DE, HI, MT, & CT). One comment within this category is, “Once success has been achieved with the assistance of a facilitator, both parents and schools want that help going forward and districts don't always try to improve their meeting skills.” The need for both parties to listen, understand, and agree with one another for the good of the student permeated comments in this category.

Themes. Overarching themes emerged from the data through qualitative analysis. The first theme that emerged was that FIEP meetings can improve communication and collaboration amongst all involved in the process, when all players are working together as a team. If the FIEP meeting is a success, relationships can be restored and the process can foster understanding amongst involved parties. However, if the meeting is not executed effectively, communication can be further damaged and meetings can still end up in mediation or due process. Comments mirroring this theme were abundant and appeared in answers from both questions, strengths and limitations.

The second theme that materialized was that FIEP meetings are only effective when executed early on in the dispute resolution framework and enough time is provided to hold the meeting. There were multiple comments, both positive and negative, about holding FIEP meetings at the beginning of a dispute, before it escalates and morphs into a bigger issue. Additionally, time was a factor for many states.

While many felt that the time it took to hold the meetings was mutually beneficial for all involved, others saw time as a constraint, citing that meetings either take too long or there is not enough time to deal with all the issues that can often be presented.

The third theme that materialized from data analysis was how the facilitator is a vital part of the process and sets the stage for the success, or failure, of the FIEP meeting. The role of the facilitator permeated answers from both questions. The facilitator needs to be highly trained and keep the meeting focused on issues, not get mired down in minutia. If the perception is that the facilitator is a neutral third party who is there to seek a resolution that is beneficial to all stakeholders, then FIEP meetings can be successful. However, if the facilitator is perceived to favor the local education agency or is not trained efficiently, FIEP meetings may not be an adequate avenue because all parties will not enter the meeting with trust. Moreover, the facilitator is not a decision maker and often times, parties involved in the meeting do not understand the facilitator's role as a listener and one to help keep the meeting on point.

Additional Comments

At the end of the survey, a comment box was provided that asked participants to upload any supporting documents; however, no one uploaded any such documents. Even though 46 state representatives responded to this questionnaire, not all of those states offer FIEP meetings. A total of 18 do not offer FIEP meetings; however, they did indicate that they do use mediation. A comment box was available for more

information to be shared in order to understand where they are, if at all, in the process of offering FIEP meetings. Both Arizona and Illinois are in the process of developing FIEP meetings, while Oregon said that the state does not support FIEP meetings, but the local school systems can in high level dispute cases.

While it is important to note the number of states who do not offer FIEP meetings and determine what they do offer, the focus of this study was on states who do offer these meetings. Data gathered from the 27 states that do offer FIEP meetings and answered at least 75% of the questions on the survey were utilized to answer the research questions, which will be discussed in detail in the following chapter.

CHAPTER FIVE

DISCUSSION

The purpose of this study was to examine FIEP meetings and determine what data are collected and the perceived strengths and limitations of these meetings. FIEP meetings were investigated through survey data collected from across the United States. Special education representatives from each state were sent a questionnaire to complete regarding ADR strategies available and utilized in their respective state, with 46 states responding.

Research Question Addressed

This study investigated one major research question with multiple parts. Each part was developed to answer a specific and relevant topic to increase the knowledge base of ADR strategies, specifically FIEP meetings.

Research Question: Part One

The first portion of the research question was designed to determine the parameters (e.g. years, availability, attorney, participants, funding) of FIEP meetings. While there are relatively few empirically based studies researching conflict between school personnel and parents during IEP meetings, there are a few studies that discuss the benefits of ADR, as opposed to due process hearings (Lake & Billingsley, 2000). It is interesting to note that the majority of states that offer FIEP meetings have done so for 9 – 11 years, which is concurrent with IDEA 2004 mandating ADR strategies. The only law that stipulates the use of ADR strategies is IDEA; however, three states

(DE, MA, & PA) offer FIEP meetings to students covered under Section 504 of the Rehabilitation Act. All of these states have offered FIEP meetings for at least 6 or more years.

There are many benefits to utilizing ADR strategies, which includes the financial and emotional benefit of using these strategies in lieu of more formal complaint procedures (Mueller, 2009a; Zirekely & McGuire, 2010). It is important to note that the associated costs incurred when entering due process can be both emotional as well as financial for the parents and school districts alike (Feinberg et al., 2002; Mueller, 2009a; Opunda, 1999; Zirkel & McGuire, 2010). Fortunately, FIEP meetings have been reported to be less costly, both emotionally and monetarily (Hazelkorn et al., 2008; Mueller, 2004). While FIEP meetings may not be as costly as other types of conflict resolution, there are some associated costs, including copies, manpower, and time away from work/students. Funds can be derived from a multitude of arenas, including federal, state, or local sources. None of the states that offered FIEP meetings for 5 or less years use federal monies; they all spend grant or local funds. Interestingly, the 4 states (IA, MI, MS, MN) that have offered FIEP meetings for 12 or more years do not use local funds at all.

It is interesting to note that research regarding the use of attorneys and the perceptions/beliefs that attorneys can complicate the cooperative and collaborative nature of the ADR process (Feinberg et al., 2002; Mueller, 2009a) has impacted states as none prohibit the use of attorneys in the mediation process (Mueller, 2009a). Data

from this study yielded the same for attorneys in FIEP meetings, with one exception; Hawaii does not allow them to be present.

Research Question: Part Two

The purpose of the second part of the research question was to establish the backgrounds, minimum qualifications, and trainings required for facilitators. Similar to results found in Markowitz et al. (2003), requirements and training for individuals involved in ADR vary across states. IDEA (2004) does not outline professional development or training that has to be provided to facilitators. Moreover, research indicates that parents' perceptions in regard to the professionalism of the facilitator can have a huge impact on the perception of how well the meeting went (Schrag & Schrag, 2004; Welsh, 2004). All states but 2 (MT & ND) provide either all day training or a combination of both; Montana and North Dakota use in-services. As it is important for facilitators to be professionally trained, it is often important to provide compensation in order to maintain highly qualified personnel. IDEA does not stipulate how or even if facilitators are compensated for their work. Findings from this study indicate that most states do pay their facilitators, with only a few using volunteers. However, the states that do utilize volunteers (HI, MA, MI, NH) have relatively small case loads, between 1 – 5 FIEP meetings per year, with one exception. Massachusetts has offered FIEP meetings for 6 – 8 years; however, they employ between 1 – 5 facilitators, with each having a yearly case load of 26 or more without compensation. Massachusetts utilizes full time state employees, so facilitation is part of their paid

responsibilities. The data also reveal that Massachusetts does not yet provide professional development for their facilitators, but the individuals comprising these roles are also mediators.

Another interesting data point was in regard to Delaware. This state employs between 1 – 5 facilitators (who are also their mediators), but they have a case load of 26 or more cases per year. Delaware has offered FIEP meetings for 9 – 11 years and they compensate their facilitators between \$251 - \$500 per case. Both Massachusetts and Delaware offer FIEP meetings to children served under both Parts B and C of IDEA, as well as students served under Section 504 of The Rehabilitation Act. The inclusion of students covered under both parts of IDEA and Section 504 could explain why both states have a higher number of cases filed per year, in relation to the other states. In contrast, the other state, Pennsylvania, which includes students under all three sections employs between 21 – 25 facilitators, compensates them \$251 - \$500 per case, with a yearly case load of between 1 – 5. It can be deduced that the case load may be less due to the number of facilitators they employ.

Another interesting finding involves Michigan, the one state which employs 26 or more facilitators. Michigan has offered FIEP meetings for 12 or more years, they use volunteers to conduct their meetings, with each volunteer having between 1 – 5 cases yearly. These volunteers are also mediators and are required to attend state training to be qualified and attend trainings and in-services for professional development purposes. It can be deduced that the case load is small because they

employ so many facilitators. Additionally, they may need to employ that many as they have offered FIEP meetings for many years and demand could necessitate the large number.

Research Question: Part Three

The third part of the research question was designed to determine what data are collected and how this information is reported related to FIEP meetings. While all states, with the exception of Hawaii, named a person or persons responsible for tracking data, multiple states (AK, AR, CT, FL, HI, IA, MS, MT, SD) do not report this data. While it may be assumed that most, if not all, these states are in the early stages of offering FIEP meetings, this would not be correct. Arkansas, Connecticut, and Florida have all offered meeting for 2 or less years; however, Iowa and Mississippi both have utilized these meetings for 12 or more years. Additionally, 4 states (LA, MA, NH, SC) place the information in the student's special education file, which indicates that the data are not reported to the public at large. All of these states have offered these meetings for at least 6 years, with the exception of New Hampshire, which has offered them for 3 – 5 years. Knowing that several states do not publicly report their data, while some do not even collect data, can be one explanation of why there are so few studies and information available about the efficacy of FIEP meetings.

While data may not always be reported to the general public, there is a need for ADR to be utilized due to the types of conflict that can arise between parents and school personnel. Placement issues, IEP implementation, and discipline/behavior

problems were chosen as the most common reasons to enter dispute resolution on this questionnaire. These findings are very similar to what other researchers in the field have ascertained. For example, the Data Accountability Center (2012) found that placement issues, FAPE, and discipline were the most common reasons for dispute amongst stakeholders.

When conflict regarding placement, FAPE, or discipline abound, it is imperative that school personnel know how to respond. In a study conducted by Garriott et al. (2000), parents indicated that school personnel did not always seem willing or able to work through the conflict in a collaborative and supportive manner. A noted area in several studies regarding parental satisfaction was that school personnel were not addressing their child's biggest needs (Fish, 2008; Spann et al., 2003). It was determined in this study that while many states do offer some sort of professional development to districts in regard to FIEP meetings, three states (CT, ID, PA) do not offer this type of training yet. What was even more surprising was that Idaho and Pennsylvania have offered FIEP meetings for 9 or more years. Moreover, many states do not follow-up with participants of FIEP meetings to collect data on success rates of these meetings. The 4 states (HI, MA, MS, SD) who indicated they do not have any follow-up system in place all have offered FIEP meetings for 3 or more years, with Mississippi offering them for 12 or more. Furthermore, 3 states are either redesigning or in progress of implementing a procedure for reporting data. Florida will implement a follow-up procedure in the future, while Montana is drafting a

follow-up survey and Utah is redesigning their follow-up procedure. Florida has offered FIEP meetings for 0 – 2 years, while Montana has offered them 3 – 5 years and Utah for 9 – 11 years.

Research Question: Part Four

The final portion of the research question was developed to establish whether FIEP meetings (a) were perceived as having strengths and/or limitations in regard to other ADR options, and (b) impacted the number of mediations, due process hearings, formal complaints, and resolution sessions held by the states during the 2012 – 2013 school year. In the current study, the number of FIEP meetings filed were typically the actual number of meetings held; however, there were a few deviations. For example, Delaware filed more than 26 FIEP meetings, but only held a fraction of those (between 6 – 10). One meeting ended in mediation while another one led to another type of dispute resolution. Deductive reasoning implies the other meetings were either never resolved or became resolved at the school level with varying types and degrees of dispute resolution assistance. Likewise, Minnesota filed 26 or more FIEP meetings, but held between 21 – 25. The representative from Minnesota indicated that 2 of their meetings ended in mediation. In a study conducted by Schrag and Schrag (2004), researchers interviewed over 100 cases, but 28 disputes were withdrawn. The most common reason for the withdrawal was the use of other local resolution procedures, team interventions, school personnel participation, and/or varying early resolution activities.

Research in the field regarding satisfaction with dispute resolution strategies has been mixed, with some stakeholders indicating they would be willing to enter into ADR again while others stating no, never again (Mueller et al., 2008; Nowell & Salem, 2007; Schrag & Schrag, 2004; Welsh, 2004). Multiple reasons have been cited for both. For example, through survey and interview data, individuals indicated that communication improved, trust was restored, and collaboration was promoted (Mueller, 2004; Mueller et al., 2008; Nowell & Salem, 2007; Welsh, 2004). These same ideas were supported in the current study, with categories that included the terms communication, collaboration, supportive, and successful agreements. For example, one state wrote, "...supporting IEP teams in determining appropriate services" was a comment coded as supportive. Conversely, there are limitations of ADR strategies that also permeate the literature, which include that these strategies can be seen as reactive because they are offered much too late in the dispute resolution framework (Feinburg et al., 2002; Mueller, 2009; Mueller & Carranza, 2011); outcomes did not enhance their child's education, and solutions were never implemented or decisions made were not effective (Schrag & Schrag, 2004). Likewise, categories that materialized from data from the current study mirror earlier studies in the field. Categories from this study include time constraints and appropriateness/effectiveness of the entire process, which includes ineffective decisions and inappropriate IEPs, as perceived by participants. A comment coded as appropriateness/effectiveness was

worded, “IEP facilitations are not well-suited to resolving pre-existing disputes, particularly when the parties are entrenched in their positions.”

Overarching themes regarding the use of ADR processes from past research, which were also supported in this research, include the importance of the neutral third party and improved communication when all stakeholders are focused on the child (Hazelkorn et al., 2008; Nowell & Salem, 2007; Mueller et al., 2008; Schrag & Schrag, 2004; Welsh, 2004). If the team is focused upon making informed decisions about the student instead of focusing on issues important to their particular cause, the meeting can benefit everyone. Moreover, if the neutral third party facilitates the meeting well, maintaining a neutral front and keeping the meeting focused on the student, the meeting is often viewed as successful.

Benefits and Implications

Results from this research revealed that FIEP meetings are currently being utilized by over half the states in the United States and strengths of the process are embedded in the descriptive, procedural, and perceptual data that were gathered. Moreover, this research extended the knowledge base of which states offer FIEP meetings, who they are offered to, who runs the meetings, what kind of training is available to those who utilize them, and specific data about how they have impacted other processes and procedures since their inception, along with perceived strengths and limitations of their use.

Overall, state representative satisfaction was favorable in this study, which was the overwhelming finding from related research (Hazelkorn et al., 2008; Nowell & Salem, 2007; Mueller et al., 2008; Schrag & Schrag, 2004). Comments such as, “Have had positive feedback (informal) from participants that they felt satisfied with the resolution and that the structure provided was extremely helpful” and “Re-assessment of issues through third party...increase safety for team members to discuss issues openly” support the assertion that overall, individuals are satisfied with FIEP meetings. There was a trend that states who have offered FIEP meetings for multiple years have heavier case loads, which indicates that the process is being utilized. Additionally, there was evidence that facilitators in most states are trained or are in the process of being trained. Additionally, most states do have professional development strategies in place or are working on them for district and school personnel. If training is not provided for the professionals utilizing FIEP meetings, it would be very difficult to offer effective meetings. It was comforting to know that professional development occurs in most states yearly and provided in multiple formats.

Because FIEP meetings are offered in more than half of the 50 states, there is possibly a trend toward decreased conflict between parents and school personnel and also a reduction in the number of more formal dispute resolution processes being explored. Overall data collected in this study support that notion, with many more strengths offered than limitations. None of the states currently using FIEP meetings indicated that they were going to rescind the opportunity to participate in this ADR

strategy; on the contrary, many states indicated that they were in the process of developing additional resources to improve the process already in place.

Limitations

Although data collected indicate that FIEP meetings are being utilized in states with some success and a there is a perceived decrease in other types of dispute resolution, there are several limitations that need to be considered when interpreting these results. First, the survey was mainly comprised of closed, multiple-choice or Likert-style questions. While there was an option for respondents to elaborate on their answers, many did not take advantage of this. One reason could be that they felt they already answered the question or because the survey could be considered lengthy and time-consuming. Whatever the reason(s), some of the data could be more meaningful if an explanation accompanied the data. For example, it may have been more meaningful to know the exact number of cases filed and subsequently held, not just a range. Follow-up questions could have provided perspective on answers like these, but that was outside the scope of this study.

Second, while multiple efforts were made on behalf of the researchers to send the electronic survey to the correct individuals within each state's DOE, the unfamiliarity with these procedures by many district personnel may have hindered the link from reaching the most qualified individual responding. When analyzing data, there were instances where no response or don't know was utilized. These responses

may have been provided because the person answering survey questions did not have the acquired knowledge to completely answer the questions.

Third, while most states indicated they do have procedures and a person or persons in place to track data, the system they use may not lend itself to answer the questions posed in this survey. The section of the survey that specifically pertained to the 2012-2013 school year had the lowest response rate, as a contained section of the survey. This could be due to the lag time between data collection at the district level, and actual data entry/analysis at the state level.

Recommendations for Future Research

Based upon the results of this study, several recommendations for future research are provided. First, follow-up semi-structured interviews should occur to gain better insight into answers provided on the survey. Some states had multiple “don’t know” answers while other states responded that they were in the process of creating procedures, but did not always explain what those procedures would entail, or when they would be implemented.

Second, the need exists for a longitudinal study to be conducted to track states’ success utilizing FIEP meetings. Additionally, it would be an important contribution to the field to see how states change procedures, training, case loads, etc. after more years of experience offering FIEP meetings. Much information can be gained by learning from others challenges, which could assist states already in the process of offering FIEP meetings, or states that want to initiate them for their districts.

Third, it would be interesting to talk to states that do not currently offer FIEP meetings and inquire about why and how successful are the ADR procedures they currently use in regard to resolving formal complaint procedures. Then, a comparison could be made using perceptual data from this study again perceptual data captured from the new study.

Additionally, performing a regression analysis or other types of data analysis could provide beneficial information to states regarding the use and implementation of FIEP meetings. For instance, it would be beneficial to determine how states that have offered meetings for a smaller period of time perceive their effectiveness and the comments they provided versus states with more years invested.

Conclusion

Findings from this study support earlier research regarding the use of ADR strategies in lieu of more formal complaint procedures, as outlined by IDEA. While there were some limitations mentioned, overall qualitative data indicated more strengths were perceived by state respondents. Over half of the states in the United States offer FIEP meetings, with 15 states offering them for 6 or more years. None of the states involved in the study indicated they would stop offering FIEP meetings, but many did indicate that they are taking measures to provide more training, or more facilitators, or offer this option to more districts in the future. Results showed there is room for improvement especially in regard to consistency of how FIEP meetings are utilized and data reported, which is why results from this study are integral to this

specific field. Data collected and analyzed can assist current states utilizing FIEP meetings, in addition to new states that propose adding this ADR strategy, gain perspective on what can be the most effective way to reduce conflict and provide viable services for students in special education.

APPENDICES

APPENDIX A: SURVEY INSTRUMENT

State Facilitated IEP Questionnaire

Name of the Organization Conducting the Survey: Clemson University

Who to Contact for Questions: Dr. Joe Ryan at jbryan@clemson.edu or 864-656-1531

Confidentiality: Confidentiality will be ensured because the survey does not contain any identifiable information on it tying it to any one state. No identifying information will be accessible to the researchers.

Length of Survey: The survey will take between 5 - 15 minutes to complete.

Directions: We are asking your help in our research project entitled "Exploring the Use of Facilitated Individualized Education Programs for Students with Disabilities Across States". Conflict between parents and school personnel is an area of increasing concern, especially for individuals involved in and with special education. Each state educational agency (SEA) is being asked to participate with Clemson University to investigate the use of an alternative dispute resolution process called facilitated IEPs. We would like you to complete a brief survey that will take approximately 15 minutes of your time.

Your participation is completely voluntary and your answers will be confidential.

There are no risks or discomforts associated with this research. The questionnaire should take only a few minutes of your time to complete, but will provide critical insights regarding the use of alternative dispute resolution for students in special education.

You are voluntarily making a decision whether or not to participate in this research study.

Your completion of the survey certifies that you have decided to participate having read

and understood the information presented. If you have any questions regarding this study please feel free to contact Dr. Joe Ryan (864) 656-1531 (Jbryan@clemson.edu). If you have any questions about your rights as a research participant that have not been answered by the investigator, you may contact Clemson University Institutional Review Board toll free (866) 297-3071. Thank you for your assistance in this survey and for helping us in our quest to best serve students with disabilities.

1. What state do you represent?
2. What is your title?
3. Does your state offer Facilitated Individualized Education Program (IEP) meetings as an alternative dispute resolution strategy?
If yes, please continue answering the remainder of the questions on the survey.
If no, please answer the following question and then return the survey:

Which alternative dispute resolution strategies do you offer?

| | | |
|------------------------|-----------------------------|--------------|
| Ombudsman | parent-to-parent assistance | case manager |
| other (please specify) | Mediation | Don't know |

Facilitated IEP meetings

4. How many years has your state utilized Facilitated IEP meetings as an alternative dispute resolution strategy?

0-2 3-5 6-8 9-11 12 or more don't know

5. Do districts in your state currently have the ability to use Facilitated IEP meetings as an alternative dispute resolution strategy?

Some districts all districts none don't know

6. Does your state allow attorneys to participate in Facilitated IEP meetings?

Yes no don't know

- a. If yes, please rank order who typically brings the attorney most often to the meeting

Parent school district both

7. Under what sections of the law can Facilitated IEP meetings be held? (please choose all that apply):

Part B of IDEA (ages 3 -22) Part C of IDEA (birth – 3) Section 504 don't

know

8. Where does funding for Facilitated IEP meetings derive? (please check all that apply):

Local state grant other (please specify) don't know

9. Listed below are some common reasons for requesting dispute resolution between parents and schools. Please check how often these issues have been reasons for dispute resolution in your state. 1. Never 2. Limited number 3. Common reason 4. Very common

| | | |
|-------------------------------|------------------|---------------------|
| identification/evaluation | placement | progress reporting |
| present levels of performance | goals/objectives | support services |
| accommodations/modifications | related services | discipline/behavior |
| assistive technology | transition | IEP implementation |
| other (please specify): _____ | | |

IEP Facilitators Qualifications and Training

10. Who generally are the Facilitators? (please check all that apply):

- a. Special educators
- b. Mediators
- c. Attorneys
- d. School psychologists
- e. Social workers
- f. Administrators
- g. Higher education faculty
- h. State department employees
- i. Other (please specify)
- j. Don't know

11. In your state, what type of qualifications must a facilitator have? (please check all that apply):

- a. Law degree
- b. Masters' degree in special education
- c. Ph.D. in special education
- d. State training
- e. Other (please specify) _____

12. How are facilitators chosen to conduct individual meetings?

random assignment geographical considerations racial/gender considerations

other (please specify) don't know

13. How many Facilitators does your state utilize?

1-5 6-10 11-15 16-20 21-25 26 or more don't know

14. What is the average case load for a Facilitator in a school year?

1-5 6-10 11-15 16-20 21-25 26 or more don't know

15. What is the compensation for a Facilitator?

Hourly pay 1-\$250 per case \$251 - \$500 per case over \$500 per case

No compensation (volunteer) other (please specify) don't know

16. What type of professional development is provided to Facilitators? (please check all that apply):

Inservices all-day trainings other (please specify) don't know

Facilitated IEP Data Tracking System Information

17. Who is responsible for tracking the Facilitated IEP meetings? (please check all that apply):

state department personnel school district personnel other (please specify) don't know

18. How are districts informed of the option for Facilitated IEP meetings? (please check all that apply):

Inservices website state department personnel school district personnel

other (please specify) don't know

19. What type of professional development is provided to districts related to Facilitated IEP meetings? (please check all that apply):

Webinars Internet modules face-to-face training by state department personnel
face-to-face by consultant other (please specify) don't know

20. How is feedback obtained regarding Facilitated IEP meetings?

surveys follow-up phone calls other (please specify) don't know

21. How do you report data collected from Facilitated IEP meetings?

Not reported state web-site district personnel maintain in special education
file Other (please specify) don't know

2012-2013 school year information

22. To the best of your knowledge, how many Facilitated IEP meetings were filed?

1-5 6-10 11-15 16-20 21-25 26 or more don't know

23. To the best of your knowledge, how many Facilitated IEP meetings were held?

1-5 6-10 11-15 16-20 26 or more don't know

24. How many Facilitated IEP meetings ended with unresolved issues and moved to
resolution sessions, mediation, due process hearing, or other formal complaint
procedures?

Resolution Sessions_____

Mediation _____

Due Process Hearing_____

Other Formal Complaint Procedure_____

25. Can you estimate how many of your requests for Facilitated IEP meetings were initiated by the following?

Parents _____

School level personnel _____

District level personnel _____

Other _____

26. To the best of your knowledge, have Facilitated IEP meetings reduced the number of other dispute resolution options utilized in your state?

Resolution Sessions yes no

Mediation yes no

Due Process Hearing yes no

Other Formal Complaint Procedure yes no

27. Based on your experiences, what do you believe are the strengths of Facilitated IEP meetings?

28. Based on your experiences, what do you believe are the limitations of Facilitated IEP meetings?

29. Are there any policies or procedures you would be willing to share in order to better understand the different ways Facilitated IEP meetings are conducted from state to state? If so, please feel free to upload any documents utilizing the link below.

APPENDIX B: SEMI-STRUCTURED PHONE CALL TEMPLATE

Hi. I am Jennifer Wagner, PhD candidate from Clemson University, and I want to gather some national data about Facilitated IEP meetings or other alternative dispute resolution strategies. This is for my dissertation research.

I plan on sending a ***brief*** survey electronically to the person in your state who can best answer these questions in the next week. Who would that person be? What e-mail address would be best to use to send the survey?

Survey: 10 – 15 minutes (most multiple choice, Likert scale)

APPENDIX C: INITIAL E-MAIL CORRESPONDENCE

Dr. Joe Ryan and Jennifer Wagner PhD candidate from Clemson University, are collecting information about Facilitated IEP meetings for dissertation research. We are asking you to please complete an electronic questionnaire regarding dispute resolution strategies/meetings in your state.

We are especially grateful for your help because it is only by asking people like you to share your knowledge so we can learn about the effectiveness of these meetings. Through your input, we hope to make positive changes for students with disabilities.

The link to this questionnaire is below

<https://www.surveymonkey.com/s/J98JP53>

APPENDIX D: SECOND E-MAIL CORRESPONDENCE

Hello. You recently received an e-mail about completing a survey for dissertation research regarding Facilitated IEP meetings in your state for Dr. Joe Ryan and Jennifer Wagner, PhD candidate from Clemson University.

We are asking you to please complete this electronic questionnaire. Your assistance can be very beneficial as we hope our work can make positive changes for students with disabilities. The survey should take about 10-15 minutes to complete.

The link to this questionnaire is below.

<https://www.surveymonkey.com/s/J98JP53>

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